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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Human rights situation in Palestine and other occupied Arab territories

Implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63)

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 22/29, provides information on the status of implementation of the recommendations contained in the report of the independent international fact-finding mission on the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem. It addresses continued Israeli settlement activity, settler violence and accountability, Palestinian detainees, including children in Israeli custody, as well as business and human rights in relation to the settlements. The report also includes summaries of the submissions received from Member States.

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I. Background

1. In its resolution 22/29 on the follow-up to the report of the independent international fact-finding mission to investigate the implications of Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem (A/HRC/22/63), the Human Rights Council requested the United Nations High Commissioner for Human Rights to present a report detailing the implementation of the recommendations contained in the report to the Council at its twenty-fifth session. The present report, submitted pursuant to that request, contains the information requested and received from States to which the fact-finding mission addressed recommendations, as well as information gathered directly by the United Nations. It should be read in conjunction with the recent reports of the Secretary-General and the High Commissioner on the situation of human rights in the Occupied Palestinian Territory.[1]

II. Overview

2. In its report, the fact-finding mission made six recommendations, of which four were addressed to the State of Israel. Basing itself on article 49 of the Fourth Geneva Convention, the mission called upon Israel to cease all settlement activities without preconditions; to immediately initiate a process of withdrawal of all settlers from the Occupied Palestinian Territory; and to ensure adequate, effective and prompt remedy for all Palestinian victims for the harm suffered as a consequence of human rights violations that were a result of the settlements, in accordance with its international obligation to provide effective remedy. The mission noted that, where necessary, steps should be taken to provide such remedy in concurrence with the representatives of the Palestinian people and the assistance of the international community.

3. In addition, the fact-finding mission called upon Israel to put an end to the human rights violations linked to the presence of settlements, and to ensure full accountability for all violations, including for all acts of settler violence, in a non-discriminatory manner, and to put an end to the policy of impunity. It furthermore urged Israel to put an end to arbitrary arrests and detention of Palestinians, especially children, and to observe the prohibition of the transfer of prisoners from the Occupied Palestinian Territory to the territory of Israel, in accordance with article 76 of the Fourth Geneva Convention.

4. In its report, the fact-finding mission called upon all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel's violations.

5. Lastly, the fact-finding mission stated that private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure that they do not have an adverse impact on the human rights of the Palestinian people, in conformity with international law and the Guiding Principles on Business and Human Rights. In this regard, the mission called upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements, respect human

[1] A/68/513, A/68/502, A/HRC/25/38, A/HRC/25/40 and A/HRC/24/30.

rights throughout their operations. The mission recommended that the Working Group on Business and Human Rights be seized of this matter.

III. Status of implementation of the recommendations of the fact-finding mission

A. Israeli settlement activity and recourse to remedy for Palestinians

6. As noted in the report of the Secretary-General on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, submitted to the General Assembly at its sixty-eighth session (A/68/513), Israel has continued to play a leading role in the creation and expansion of settlements in violation of international law. Notwithstanding the recommendations made to Israel by the fact-finding mission in its report and the renewal of peace negotiations mediated by the United States of America, Israel has continued to promote settlement expansion. As affirmed by the Human Rights Council in its resolution 22/29, Israeli settlement activities undermine international efforts with respect to the peace process and the realization of a two-State solution.

7. From March to November 2013, plans for at least 8,943 new settlement units were promoted by the Government of Israel in the West Bank, including East Jerusalem.[2] Israel has also made a number of public announcements regarding settlement construction, for example on 30 October, when it announced the construction of 5,000 new units in the West Bank, including East Jerusalem, a day after the release of 26 Palestinian prisoners in the context of the peace process. The Secretary-General publicly deplored the continuing expansion of Israeli settlements in the West Bank, including East Jerusalem, on a number of occasions, and has repeatedly stated that settlements are in violation of international law, and that all settlement activity in the West Bank and East Jerusalem must cease.[3] He urged Israel to heed the calls of the international community and abide by its commitments under international law and the Quartet road map.[4]

8. The continued fragmentation of the West Bank, including East Jerusalem, through Israeli settlement expansion has gone hand-in-hand with the construction of the wall, the destruction of Palestinian-owned property and the forcible displacement of Palestinian civilians, including Bedouin communities. These acts violate Israel's obligation to protect the population under occupation and run counter to the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 4 July 2004, and may have further undermined the possibility for the Palestinian people to realize their right to self-determination through the creation of a viable State.[5]

9. As at November 2013, Israel had not provided remedy for Palestinian victims for the harm suffered as a consequence of human rights violations resulting from settlements. The United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory, established in 2007, collected more than 38,500 claims and more than half a million supporting documents in the Occupied Palestinian Territory. Of

[2] See A/HRC/25/38.

[3] See www.un.org/sg/statements/index.asp?nid=7314 and www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[4] See www.un.org/News/Press/docs/2013/sgsm15108.doc.htm and www.un.org/News/Press/docs/2013/sgsm15427.doc.htm.

[5] See A/HRC/24/30.

these claims, to date 8,994 cases have been reviewed by the Board of the Register and deemed valid for inclusion in the Register.[6]

B. Settler violence and accountability

10. With regard to settler violence, in her most recent report submitted to the Human Rights Council on the implementation of resolution 22/26,[7] the High Commissioner highlighted the failure of Israel to maintain public order, contain settler violence, address the lack of meaningful accountability and afford protection from the said violence. Since February 2013, Israeli settlers have continued to attack Palestinians and their property in the West Bank, including East Jerusalem, despite Israel's obligation under international law to protect Palestinians and their property from acts of violence by settlers, to ensure accountability for crimes committed and to provide remedy for violations suffered by Palestinians. Between 2005 and 2013, only 8.5 per cent of the investigations opened in relation to settler violence incidents in the West Bank resulted in indictments, and some 84 per cent of the investigations were closed, owing mainly to investigatory failures, including the lack of identification of suspects and the inability to collect evidence for prosecution.[8]

C. Palestinian detainees, including children in Israeli custody

11. The fact-finding mission called for Israel to put an end to arbitrary arrests and detention of Palestinians, especially children. As at 1 October 2013, 5,046 Palestinians were in Israeli detention. A total of 135 of them were in administrative detention on security grounds, without charge or trial; well over half of them had been held for more than six months, and some for more than three years.[9] In this connection, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Secretary-General, the High Commissioner, and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories have documented the treatment of Palestinian detainees, including children in Israeli custody.[10]

12. In February 2013, the United Nations Children's Fund (UNICEF) issued a report in which it documented significant alleged violations of children's rights in the West Bank, noting that the ill-treatment of Palestinian children who come in contact with the Israeli military detention system appeared to be widespread, systematic and institutionalized throughout the process, from the moment of arrest until the child's prosecution and eventual conviction and sentencing.[11]

13. UNICEF issued an update report in October 2013 concerning progress made by the Israeli authorities towards implementing some of the 38 recommendations contained in its previous report. The actions taken by the Israeli Military Advocate General included, inter alia, an agreement by the Israeli Defense Forces Central Command for the West Bank to pilot a test summons of children in certain areas of the West Bank, in lieu of night arrests,

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[6] A/ES-10/599, annex. See also www.unrod.org.

[7] A/HRC/25/38.

[8] A/68/513, para. 52. See also A/68/502.

[9] A/HRC/25/40.

[10] A/HRC/23/21, A/HRC/24/30, A/HRC/25/40 and A/68/379.

[11] Children in Israeli Military Detention, available from http://unispal.un.org/UNISPAL.NSF/3822b5e39951876a85256b6e0058a478/1ee6b43ba34634f885257b260051c8ff?OpenDocument.

and the issuance of military orders reducing the time that a Palestinian child could be detained prior to appearing before a military court judge for the first time, as well as regulating the duration of remand prior to indictment.[12]

D. Business and human rights in relation to the settlements

14. In its resolution 22/29, the Human Rights Council called upon the relevant United Nations bodies to take all necessary measures and actions within their mandates to ensure full respect for and compliance with Council resolution 17/4 on the Guiding Principles on Business and Human Rights and other relevant international laws and standards, and to ensure the implementation of the United Nations "Protect, Respect and Remedy" Framework, which provides a global standard for upholding human rights in relation to business activities that are connected with Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem. Pursuant to resolution 22/29, the Working Group on the issue of human rights and transnational corporations and other business enterprises discussed the Council's request to fulfil its mandate accordingly during its fifth session, and decided to issue a statement thereon before the twenty-sixth session of the Council.[13]

15. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reported on the involvement of companies that profit from the construction and maintenance of settlements as well as other activities related to settlements in the Occupied Palestinian Territory.[14] In his most recent report (A/68/376), the Special Rapporteur explored the implications of corporate involvement by way of a model of legal analysis to assess the probability of liability, including international criminal liability, for corporate complicity in breaches of international law related to illegal settlements.

16. In this context, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories also reported on the involvement of companies profiting from the settlements, and noted that businesses need to exercise due diligence in the light of the potential legal and reputational consequences for businesses associated with Israel's settlement enterprise.[15]

IV. Submissions by Member States pursuant to resolution 22/29

17. On 16 October 2013, the Office of the High Commissioner (OHCHR) addressed notes verbales to all Permanent Missions to the United Nations Office and other international organizations in Geneva (except Israel and the State of Palestine), in which it requested information on any steps that their Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report (A/HRC/22/63), and in particular with regard to those contained in paragraphs 116 and 117 thereof.

18. Separate notes verbales were addressed to the Permanent Mission of Israel and the Permanent Observer Mission of the State of Palestine, in which OHCHR requested information on any steps that their respective Government had taken, envisaged taking or were otherwise aware of concerning the status of implementation of the recommendations of the fact-finding mission report. At the time of the preparation of the present report, no

[12] See www.unicef.org/media/media_70666.html.
[13] A/HRC/WG.12/5/1.
[14] See A/67/379, A/68/376and A/HRC/23/21.
[15] A/68/379, para. 38.

information had been received from either the Permanent Mission of Israel or the Permanent Observer Mission of the State of Palestine.

Cuba

19. The Permanent Mission of Cuba submitted a note verbale dated 7 November 2013. Cuba condemned the colonization by Israel of the occupied Palestinian territories, including East Jerusalem, and the violence, terror, provocation and incitement by Israeli settlers against Palestinian civilians and property, including homes, orchards, mosques and churches. Cuba deplored all illegal Israeli measures associated with the continued colonization of the Occupied Palestinian Territories, including the destruction of vast tracts of land, and the construction and expansion of illegal settlements, outposts and associated settlement infrastructure.

20. Cuba also condemned the demolition of Palestinian homes, the revocation of residency permits, the ongoing construction of the wall and the imposition of arbitrary and racist restrictions on residence and movement through a regime of permits and checkpoints throughout occupied Palestine, including within and around East Jerusalem. Cuba expressed concern at the separation of East Jerusalem from the rest of the occupied territory and the fragmentation of Palestinian territory into isolated areas and walled cantons. It also expressed its concern at the displacement of thousands of Palestinians in the occupied Palestinian territories, including many Bedouin families.

21. Cuba stated that such policies and practices by Israel, the occupying Power, constituted serious violations of international law and a flagrant defiance of United Nations resolutions and the advisory opinion of the International Court of Justice of 9 July 2004. In this regard, Cuba called for the prompt implementation of the mandate of the United Nations Register of Damage Caused by the Construction of the Wall in the Occupied Palestinian Territory.

22. Cuba noted that there was an incompatibility between the peace process negotiations and the practice of illegal colonization, which aimed to impose a unilateral solution by creating facts on the ground through the illegal acquisition of land and de facto annexation of Palestinian territory. It also noted that Israel's illegal colonization seriously undermined the contiguity, integrity, unity and viability of the Occupied Palestinian Territory and threatened the prospects of a peaceful two-State solution within the borders of 1967. Cuba affirmed that illegal settlement activities remained the largest obstacle to peace, which undermined all efforts to end the Israeli occupation of Palestinian territory, including East Jerusalem.

23. Cuba stressed that Israel had no jurisdiction over the Occupied Palestinian Territory, including the "illegal" settlements, and urged the international community to continue its efforts to achieve compliance with the resolutions adopted by the Security Council, the General Assembly and the Human Rights Council.

Denmark

24. In a note verbale dated 12 November 2013, the Permanent Mission of Denmark stated that Denmark was pursuing a peaceful settlement of the Israeli-Palestinian conflict and that it actively supported the ongoing efforts made by the two parties to reach a peace agreement. Denmark associated itself fully with the efforts made by the United States of America in recent months, and noted that the present situation offered more hope than in the past few years.

25. Denmark pointed out that, as a member of the European Union, it fully associated itself with the policy and initiatives undertaken by the European Union as a whole, as well as the various efforts made by the European External Action Service and the Commission of the European Union to further peace and justice.

26. Denmark also pointed out that, in October 2012, it had issued guidance to Danish retailers on labelling certain settlement products on a voluntary basis. The correct identification of the country of origin was required for all products, and the guidance issued by the Government of Denmark prohibited the labelling of products from the Occupied Palestinian Territory as originating from "Israel". According to the guidance, settlement produce could be labelled as "Origin: the West Bank" or "Produced at the West Bank".

European Union

27. According to the note by the Permanent Delegation of the European Union submitted dated 21 November 2013, the European Union had consistently regarded Israeli settlements as illegal under international law and an obstacle to peace. Continued settlement expansion undermined the prospects of a negotiated resolution of the conflict by jeopardizing the possibility of a contiguous and viable Palestinian State, and that of Jerusalem, as the future capital of two States.

28. The European Union also pointed out that, on 19 July 2013, it had published guidelines on the eligibility of Israeli entities for European Union funding, in conformity with a series of unanimous political positions taken by the Foreign Affairs Council. This included the conclusions by the Council on the Middle East peace process of 10 December 2012, according to which all agreements between the State of Israel and the European Union had to, in accordance with international law, indicate unequivocally and explicitly their inapplicable nature to the territories occupied by Israeli in 1967. It also referred to the decision by the Council with regard to the Occupied Palestinian Territory, which stated that "settlement activity will not benefit from any sort of EU funding or programmes". The European Union also noted that these guidelines were in line with the long-standing position of the European Union not to recognize the sovereignty of Israel over the occupied territories or to consider them part of Israel.

29. The European Union reaffirmed its commitment to ensure continued, full and effective implementation of existing European Union legislation and bilateral agreements applicable to settlement products, and referred to a revised notice to importers issued on 3 August 2012 concerning imports from Israel to the European Union. It also referred to an earlier notice, published on 25 January 2005, in which operators had been reminded that products produced in the Israeli settlements located within the territories brought under Israeli administration in June 1967 were not entitled to benefit from preferential tariff treatment under the European Union-Israel Association Agreement.

30. The European Union also noted that, since 1 February 2005, the exclusion of settlement goods from preferential treatment has been implemented in the European Union in accordance with a "technical agreement" concluded by the European Union and Israel, whereby the postal code and the name of the city, village or industrial zone where production conferring originating status had taken place appeared on all proof of preferential origin issued, or made in Israel. Member States custom authorities also checked whether the postal codes appearing on Israeli proof of origin presented to them corresponded to any of the postal codes appearing in the list of non-eligible locations made available to them by the Commission, and refused preference where it was. It noted that the list of non-eligible locations had been made public as a result of the afore-mentioned revised notice of 3 August 2012.

31. In addition, on 22 June 2013, the European Commission had published implementing regulation OJEU L-170 on marketing standards that excluded fresh fruit and vegetables in the occupied territories from the possibility of being certified by Israeli authorities. The European Union also expressed its belief that the Guiding Principles on Business and Human Rights, endorsed by the Human Rights Council, had to be applied globally, and called on European companies to implement the Guiding Principles in all circumstances, including in Israel and the Occupied Palestinian Territory.

Ireland

32. In a note submitted by the Permanent Mission of Ireland on 6 November 2013, the Government of Ireland pointed out that it did not recognize any transfer of sovereignty or annexation of Palestinian territory occupied by Israel in 1967 pending an agreement between the parties to the conflict. Ireland had consistently affirmed that the establishment of Israeli settlements in the Occupied Palestinian Territory was in breach of international law.

33. Ireland was considering the formulation of a national plan of action for the implementation of the Guiding Principles on Business and Human Rights. It was not aware of any Irish businesses engaged in activities in Israeli settlements. It stated that the website of the Department of Foreign Affairs and Trade of Ireland carried a warning to persons considering investing in or buying property in the settlements with regard to their legal status. The questions of access to the market and the treatment and labelling of goods produced in settlements were determined at the level of the European Union.

Saudi Arabia

34. In a note verbale dated 23 October 2013, the Permanent Mission of the Kingdom of Saudi Arabia stated that Arabia had no political, economic, trade or investment relations with Israel or with any companies referred to in the recommendation contained in paragraph 117 of the report (A/HRC/22/63) or any of their activities.

Syrian Arab Republic

35. In a note verbale dated 6 November 2013, the Permanent Mission of the Syrian Arab Republic stated that the report of the fact-finding mission had reaffirmed the "viciousness" of Israeli policies and practices towards the Palestinian people, their property and land. It noted that the said policies and practices demonstrated Israel's contempt for international humanitarian and human rights law.

36. The Syrian Arab Republic endorsed the findings of the report of the fact-finding mission and affirmed that the continued occupation of Arab territories since 1967 was the root cause of the human rights violations witnessed. It called upon Israel to comply with United Nations resolutions, including Security Council resolution 242 (1967), and to withdraw from the Palestinian territories, including East Jerusalem, occupied since 1967. This was the only solution that would enable the Palestinians to enjoy fully their right to self-determination and to establish an independent State.

37. The Syrian Arab Republic was fully cognizant of the implications of the practices of the occupying Power in the Palestinian territories, given that Israel committed the same violations in the occupied Syrian Golan. The Syrian Arab Republic asserted that its call for Israel to end the occupation did not contradict the recommendations of the fact-finding mission, and noted that the recommendations contained in the report of the mission were temporary measures needed to mitigate the impact of the occupation, including settler violence, and to halt the encroachment on Palestinian land through illegal settlement construction.

38. In conclusion, the Syrian Arab Republic welcomed the report of the fact-finding mission and commended the efforts to seek the truth in an independent, apolitical and impartial manner. It also expressed its willingness to cooperate by furthering the implementation of the recommendations outlined by the mission in its report in order to end Israeli violations of the Palestinian people. Finally, the Syrian Arab Republic urged that serious measures be taken to end the occupation of all Arab territories occupied since 1967.

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Human rights situation in Palestine and other occupied Arab territories

Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1

Summary

The present report is the High Commissioner's sixth periodic report on the human rights situation in the Occupied Palestinian Territory submitted pursuant to Human Rights Council resolutions S-9/1 and S-12/1.

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I. Introduction

1. The present report is the sixth periodic report on the human rights situation in the Occupied Palestinian Territory submitted by the United Nations High Commissioner for Human Rights. It covers the period from 30 November 2012 to 8 November 2013.

2. The information in the present report is based primarily on human rights monitoring carried out by the field presence of the Office of the United Nations High Commissioner for Human Rights in the Occupied Palestinian Territory (OHCHR-oPt), within the framework of General Assembly resolution 48/141 and Human Rights Council resolutions S-9/1 and S-12/1.

3. In the present report, the High Commissioner highlights issues of concern with regard to each of the main duty bearers in the Occupied Palestinian Territory, namely the Government of Israel, the Palestinian Authority and the de facto authorities in Gaza. The issues addressed in the report are far from exhaustive of all human rights concerns in the Occupied Palestinian Territory. The report focuses on areas requiring priority attention by duty bearers and should be read in conjunction with four recent reports by the Secretary-General (A/HRC/24/30, A/68/502, A/68/513 and A/HRC/25/38), which address additional issues not dealt with in the present report.

4. As noted in the High Commissioner's last report on the human rights situation in the Occupied Palestinian Territory (A/HRC/22/35), in March 2012 the Government of Israel suspended its relations with the Human Rights Council and with OHCHR, following the adoption of Council resolution 19/17 establishing a fact-finding mission on Israeli settlements. The Government of Israel revised its position on 29 October 2013, when it participated in the second review of Israel under the universal periodic review. There are also positive signs regarding the re-establishment of the relationship with OHCHR, which remains ready to engage in open and ongoing cooperation with the Government of Israel. With regard to the Government of the State of Palestine,[1] OHCHR notes with appreciation the good cooperation by the ministries of Foreign Affairs, the Interior, Justice and others.

II. Legal framework

5. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory. A detailed analysis of the applicable legal framework and the basis for the obligations of the different duty bearers, namely the State of Israel, as the occupying power, the Palestinian Authority and the de facto authorities in Gaza, can be found in the High Commissioner's first periodic report on the situation of human rights in the Occupied Palestinian Territory (A/HRC/12/37, paras 5–9). This analysis remains valid.

[1] For the purposes of this report, Government of the State of Palestine and Palestinian Authority are used interchangeably, see A/HRC/22/35, footnote 46.

III. Human rights violations by all duty bearers

A. West Bank, including East Jerusalem

1. Excessive use of force by both Israeli and Palestinian security forces

Israeli security forces

6. The use of force by Israeli security forces, including the Israeli Defence Forces (IDF) and the Border Police, in the West Bank is of serious concern. During the reporting period, this led to the death of 23 people and at least 3,623 people were injured[2] — a significant increase from the previous reporting period (16 November 2011 to 29 November 2012), during which seven Palestinians were killed and 3,036 people injured by Israeli security forces.[3]

7. Many of the casualties were living in refugee camps, which present particular challenges, including in terms of density and, at times, hostility, of the population. Many deaths occurred inside or close to refugee camps, particularly during search and arrest operations. As of 22 October 2013, 12 refugees had been killed since the beginning of the year (compared to none in 2012).[4] Palestinians have also been killed or injured while attempting to cross the wall into Israel or during demonstrations (see para. 60 below).[5]

8. Other incidents occurred close to settlements and have been linked to settlement expansion, settler violence and the lack of protection afforded to Palestinians.[6] Nine Palestinians from Al-Jalazun refugee camp were injured, mostly by live fire by Israeli security forces, but also by rubber-coated metal bullets (RCMBs), in a series of incidents near the settlement of Bet El, in September and October 2013.[7]

9. In some of the incidents documented by OHCHR, the Israeli security forces seemed to have made the decision to use force that was not proportionate to the seriousness of the offence. For example, IDF soldiers responded to stones thrown at their convoy as it passed through a crowded market near Qabatiya on 31 October 2013 with tear gas, sound grenades and live ammunition, which resulted in the death of an unarmed 21-year-old man, Ahmad Tazaz'a.[8]

10. OHCHR documented an incident at Qalandia refugee camp on 26 August 2013, in which three Palestinians were killed and 19 others injured in a search and arrest operation. IDF and Border Police raided the camp in search of a Palestinian man in the early hours of the morning. Reportedly, the Israeli security forces used live ammunition to secure the area while searching the target's house, injuring two Palestinians, including a sanitary worker employed by the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) who was carrying out his duties at least 40 metres away, where he posed no threat.

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[2] Source: OHCHR and Office for the Coordination of Humanitarian Affairs (OCHA): one man died on 28 November 2013 from injuries, including exposure to tear gas, sustained during the reporting period.

[3] A/HRC/22/35, para. 23.

[4] Source: UNRWA.

[5] A/24/30, paras. 37–45; A/68//502, paras. 36–43.

[6] A/HRC/25/38, chaps. V and VI.

[7] Source: OHCHR-oPt.

[8] Ibid.

11. As the camp became aware of the presence of the Israeli security forces, and as IDF reinforcement arrived, major clashes ensued in the camp's main street. The Israeli security forces responded to stone-throwing with tear gas, RCMBs and live ammunition. Two people, Jihad Aslan and Younis Jahjouh, were shot and killed as they threw stones at the soldiers. UNRWA employee, Ruben Zayed, was shot and killed on his way to work by the Israeli security forces as they were leaving the camp. In all of these cases, those killed or injured presented no threat to the lives of the soldiers.[9]

12. Regarding Israeli security forces firing at Palestinians attempting to cross the wall, it often appeared that the objective was to stop people crossing at all costs. OHCHR documented the case of a man who was shot in his ankles as he tried, and failed, to cross the wall on 19 October 2013, near Meitar terminal in Hebron.[10]

13. Israel has an obligation to respect, protect and fulfil the right to life and to act in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).[11] Therefore, in cases where use of force is necessary in the West Bank, including East Jerusalem, Israeli security forces must seek to exercise restraint and act in proportion to the seriousness of the offence and the legitimate objective to be achieved and to minimize damage or injury. The use of firearms is only permitted in extremely limited circumstances, primarily in self-defence or defence of others against imminent threat of death or serious injury. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.[12]

14. The large number of casualties due to the use of live ammunition by the Israeli security forces raises serious questions as to whether the rules of engagement of the Israeli security forces are in compliance with international law, whether such rules are properly implemented and respected and whether appropriate sanctions are imposed for non-compliance. On repeated occasions, the Israeli security forces have used an excessive level of force that has resulted in death and injuries to Palestinians. Without rigorous regulation and effective accountability, the actions of the Israeli security forces are likely to continue to cause unlawful deaths and injuries.

Palestinian security forces

15. An arrest operation by the Palestinian security forces on 27 August 2013 in Askar refugee camp, involving the Palestinian Preventive Security Service (PPS) and the Palestinian police, was of particular concern. A crowd gathered and began throwing stones at the Palestinian security forces. As the security forces tried to leave, one of their vehicles got stuck. The crowd continued to throw stones and a member of the security forces fired in the air. According to eyewitnesses, very soon after, many members of the security forces, apparently panicking, started firing in the air and at the crowd. Amjad Odeh, who was standing about 30 to 50 metres from the Palestinian security forces, received a shot in the head and was killed, while another man was shot in the leg.[13]

16. The Palestinian security forces also conducted a series of operations in late August to early September 2013 in El Far'a refugee camp, during which a number of Palestinians protesting the entry of the security forces into the camp were injured with live ammunition and tear gas, allegedly directed at the protestors. Some of the persons subsequently detained

[9] Ibid.
[10] See also A/HRC/24/30, paras. 37–45.
[11] International Covenant on Civil and Political Rights (ICCPR), art. 6; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), third preambular paragraph.
[12] Basic Principles, principle 9.
[13] Source: OHCHR-oPt.

were denied various due process rights and allegedly subjected to ill-treatment. While initially deployed to address a law and order problem inside the camp, the Palestinian security forces intervention involved multiple human rights violations and contributed to worsening tensions.[14]

17. The Palestinian Authority and security forces must act in accordance with the Basic Principles, which constitute the basis for the PPS code of conduct, which was drafted with the assistance of OHCHR and approved by the head of the PPS in May 2013. These incidents clearly show the need for the effective implementation of the Basic Principles.

2. Mass demolitions, forcible transfer and revocation of residency rights

18. The Israeli authorities carried out mass demolitions of villages in the West Bank, particularly in East Jerusalem and in Area C, with Bedouin and herding communities being especially vulnerable. The rate of demolitions showed no sign of abating during the reporting period; the Israeli authorities destroyed 576 structures, including 220 residences, in Area C and in East Jerusalem, displacing 964 people, including 483 children. In East Jerusalem alone, the Israeli authorities destroyed 99 structures, including 52 residences, displacing 320 people, including 161 children.[15]

19. Communities in the Jordan Valley, East Jerusalem and the South Hebron Hills were especially exposed to these processes. In August and September 2013, Israeli authorities entirely or almost entirely destroyed the Bedouin and herder communities in Tel al Adassa and Az Za'ayyem in East Jerusalem and Makhul in the northern Jordan Valley.[16]

20. Citing a lack of building permits, the Israeli authorities destroyed all of the structures in the Bedouin community of Tel al Adassa, rendering seven families (39 people) homeless. The authorities ordered the community to evacuate the area permanently or risk high monetary fines and confiscation of livestock. No alternative housing options were offered. The community was thus forced to move to two temporary locations, where they remain vulnerable to further demolitions and repeated displacement due to lack of legal security of tenure and the inability to obtain building permits.

21. These demolitions fall within the broader context of Israel's planning policy, which itself discriminates against Palestinians.[17] Such demolitions breach Israel's international legal obligations to ensure Palestinians' rights to adequate housing, including the prohibition on forced evictions and ensuring security of tenure, and to freedom from arbitrary or unlawful interference with privacy, family and home.[18] The destruction of property and permanent displacement of the communities from their initial locations may amount to violations of the prohibitions on forcible transfer and destruction of property under articles 49 and 53 of the Fourth Geneva Convention, which, as the occupying power, Israel is obliged to respect.

22. At least 3,300 Palestinians in Bedouin and herder communities in the periphery of Jerusalem, Jordan Valley and Massafer Yatta in the South Hebron Hills remain particularly vulnerable to forcible transfer and forced eviction by Israel.[19] These communities continue

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[14] Ibid.

[15] Compared with 677 structures (210 residences) from 30 November 2011 to 29 November 2012, Source: OCHA.

[16] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13662&LangID=E; http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13786&LangID=E.

[17] A/HRC/25/38, chap. IV.

[18] International Covenant on Economic, Social and Cultural Rights (ICESCR), art. 11; ICCPR, art. 17.

[19] A/HRC/24/30, paras. 27–29; A/67/372, paras. 36, 37 and 55.

to live in a coercive environment marked by insecurity of tenure, demolitions, settler violence and multiple human rights violations. In addition, the Israeli authorities obstruct humanitarian access to Massafer Yatta communities.

23. The insecure residency status of East Jerusalem Palestinians also remains a concern. A survey commissioned by the United Nations revealed that the equivalent of 70,000 Palestinians have changed their place of residence since September 2000 due to Israeli policies and practices. Most of this displacement was triggered by the potential revocation by the Israeli authorities of the Jerusalem identification documents of Palestinians if they lived outside the municipal boundary of Jerusalem. The majority of the displaced persons were living in the suburbs of Jerusalem and moved back into the city to avoid revocation of their status.[20]

B. Gaza

Blockade of Gaza

24. Israel continued to impose a blockade of Gaza, resulting in violations of international law, including by severely restricting the freedom of movement of Palestinians out of Gaza and their access to basic utilities, housing, education, work, health and an adequate standard of living via various measures, including import and export restrictions.[21]

25. Since 2007, when the blockade was tightened, Israel has been allowing movement of Palestinians out of Gaza through Israel, only in "exceptional humanitarian cases".[22]

26. Given the restrictions imposed by Israel, Gazans have relied heavily on the Rafah crossing, the official border crossing between Egypt and Gaza. However, since July 2013, Egyptian authorities have severely limited the opening of the Rafah crossing. The number of Palestinians exiting Gaza through Rafah fell from an average of 40,000 per month during the first half of 2013 to 11,000 a month between July and September 2013.[23]

27. More Palestinians went through the Erez crossing to Israel. In September 2013, nearly 5,000 Palestinians crossed through Erez — 20 per cent more than the monthly average for the first half of 2013.[24] However, this does not mean that the criteria for permission to cross through Erez have been eased. Although the increase is significant, it remains insufficient to meet the needs of the Gazan population. Thousands of people wishing to travel outside of Gaza for work, education, family reunion and health care are not able to do so due to the restrictions in place.[25] Under international law, Israel, as the occupying Power, is responsible for ensuring the right to freedom of movement of Palestinians, including Gaza residents.[26]

28. Following the ceasefire understanding between the de facto authorities in Gaza and Israel in November 2012 (November 2012 agreement), Israel slightly eased restrictions on the import of goods.[27] However, such measures remain insufficient, given the limited

[20] OCHA-commissioned survey covering September 2000 to June 2012 (unpublished); A/68/502, para. 28.

[21] A/68/502, paras 5–16.

[22] Ibid.; http://www.gisha.org/item.asp?lang_id=en&p_id=2130.

[23] See http://www.gisha.org/UserFiles/File/publications/Info_Gaza_Eng.pdf.

[24] See http://www.gisha.org/item.asp?lang_id=en&p_id=2154.

[25] Ibid.; also http://www.gisha.org/item.asp?lang_id=en&p_id=2130.

[26] ICCPR, art. 12; Hague Regulations, art. 43.

[27] A/HRC/24/30, paras. 13–15; also http://www.cogat.idf.il/901-10767-en/Cogat.aspx.

volumes and types of materials allowed through the Kerem Shalom border crossing, the only commercial crossing between Gaza and Israel. Gaza's imports still fall significantly short of the pre-2007 level, and Gaza's exports, representing only 2 per cent of the pre-closure level,[28] continued to be severely restricted, directly impacting livelihoods, economic sustainability and development throughout Gaza.

29. During the reporting period, Egyptian authorities destroyed numerous tunnels used to smuggle goods from Egypt to Gaza.[29] Regardless of questions regarding the legality of using the tunnels, these measures resulted in a shortage of affordable fuel, construction materials, medicine and other goods that normally entered Gaza through the tunnels from Egypt. In response to the situation in Gaza, Israel slightly eased restrictions on the movement of goods. Despite a slight increase in permitted imports, the entry of goods at Kerem Shalom still falls significantly short of meeting the full needs of the Gaza population. The shortage of fuel further disrupted the operation of basic services and exacerbated the already dire situation.[30] To make matters worse, on 1 November 2013, the only power station in Gaza was shut down due to failure by the Palestinian Authority and the de facto authorities in Gaza to agree on fuel prices; since then, the power supply has been restricted to six hours a day.

30. The blockade and related restrictions penalize and impose hardship on the civilian population. These measures contravene article 33 of the Fourth Geneva Convention, which prohibits collective penalties, and should be lifted.[31]

Access restricted areas

31. The November 2012 agreement included the easing of restrictions relating to access restricted areas imposed by Israel on land and at sea. Actual access to land in access restricted areas increased, with some Palestinians being able to access land that had been inaccessible for years. However, the Israeli authorities continued to prohibit access up to at least 300 metres from the fence between Gaza and Israel in most areas.[32] Such restrictions have resulted in the loss of large tracts of arable land.

32. Incidents of use of live ammunition by Israeli Defence Forces (IDF) causing injuries and death to Palestinians — occurring beyond 300 metres of the fence, though less frequently and at shorter distances from the fence than before November 2012 — show that improved access remains limited and precarious. During the reporting period, four Palestinian civilians were killed and 70 injured by the IDF in areas up to and beyond 300 metres of the fence, mostly in northern Gaza.[33] On 30 September, two reportedly unarmed[34]

Between 17 September and 13 October 2013, Israel allowed the entry of limited quantities of construction materials for the private sector for the first time since June 2007: see http://www.israelnationalnews.com/News/News.aspx/172039#.Um-8SHDIZcA; http://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2013_01_28_english.pdf. However, Israel reversed its decision following the discovery of a tunnel between Gaza and Israel: see http://www.gisha.org/item.asp?lang_id=en&p_id=2133.

[28] A/68/502; http://www.pchrgaza.org/files/2013/Closure_August.pdf; OCHA, Gaza Crossings Activities Database.

[29] See http://en.aswatmasriya.com/news/view.aspx?id=ddbc6c63-b774-44c5-90c5-9896780f1327; currently the import of goods from Egypt into Gaza through Rafah is not formally permitted.

[30] See http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2013_10_12_english.pdf.

[31] A/HRC/24/30, paras. 21-23.

[32] A/HRC/24/30; A/68/502.

[33] Source: OPT Protection Cluster.

[34] See http://www.haaretz.com/news/diplomacy-defense/.premium-1.549795.

Palestinians approached the fence in northern Gaza reportedly with the intention of crossing into Israel; one was killed and the other was arrested by the IDF. An ambulance retrieved the body 400 metres from the fence. According to the medical report, numerous bullet entry holes were found in the victim's back and the left side of his upper body. In another case documented by OHCHR, on 18 August, a day labourer — reportedly harvesting okra in eastern Gaza city about 400 metres from the fence — was shot in the leg without any prior warning. There is no indication that these persons constituted an imminent threat to the IDF at the time of the shootings.[35] Based on information available to OHCHR, the use of force was excessive and unnecessary.

33. In November 2012, as part of the agreement, Israel extended the imposed fishing limit from 3 to 6 nautical miles.[36] While Palestinian fishermen have since increased their catch, they are still denied access to the most productive fishing areas, which start at approximately 8 nautical miles from the shore.[37]

34. Fishermen continued to be subjected to arbitrary detention, shot at with live ammunition, and have had their fishing boats and equipment damaged and/or confiscated. During the reporting period, 36 fishermen were detained and 10 injured;[38] 11 fishing boats were confiscated and 16 were damaged; the engines of nine boats, fishing equipment of numerous boats and approximately 500 fishing nets were damaged by the Israeli Navy.[39]

35. The means used by the Israeli Navy to enforce the access restricted areas continue to put fishermen at risk. Incidents of (warning) shots fired towards fishermen — including those within the imposed limits — continue to be reported on an almost daily basis.[40] On 19 May 2013, two fishermen were about 1 nautical mile from the shore in northern Gaza and were reportedly bringing in their catch of fish when two Israeli Navy patrol boats started to shoot into the water around them. Fearing arrest, the fishermen headed towards the shore. Both were arrested, taken to Ashdod in Israel, interrogated and released the next day; their boat and fishing equipment were confiscated.

36. The confiscation and damage of fishing nets, for which there is no discernible security justification, has a particularly negative impact on the fishermen, as nets are very expensive and few can afford to replace them.

37. Restricting Palestinian access to an essential part of their agricultural lands and imposing fishing limits on Palestinian fishermen undermine the livelihood of tens of thousands of Gazans, and violate their human rights, including their rights to work, to freely dispose of their natural wealth and resources, to an adequate standard of living and to food.[41]

Rocket and mortar shell fire from Gaza and Israeli airstrikes

38. Both Israeli and Palestinian armed groups in Gaza have breached the November 2012 ceasefire understanding on a number of occasions, although no major escalation in hostilities has taken place. The United Nations Department for Safety and Security reported 65 rockets and 15 mortar shells fired from Gaza towards Israel, with an additional 19

[35] Source: OHCHR-oPt.

[36] Following rocket fire from Gaza, the fishing zone was reduced to 3 nautical miles between 21 March and 21 May 2013.

[37] Source: FAO and Palestinian Fishermen's Syndicate in Gaza.

[38] Source: OPT Protection Cluster; information gathered suggests that all but one were released.

[39] Source: Union of Agricultural Work Committees.

[40] Ibid.

[41] ICESCR, arts. 1, para. 2, 6 and 11.

rockets and five mortars landing within Gaza and 20 rockets exploding at the launching site during the reporting period. No injuries were reported. The rockets are indiscriminate and a violation of international law.[42] Israel conducted 13 airstrikes, fired at least two tank shells and opened heavy machine-gun fire from a helicopter, causing the death of five persons and injuring two others. It is alleged that six of the victims were members of an armed group. Reportedly, five Israeli soldiers were injured in one of these incidents on 1 November 2013.[43] The IDF also conducted 58 incursions into Gaza.

C. Issues affecting the West Bank, including East Jerusalem, and Gaza

1. Detention, torture and ill-treatment

39. During the reporting period, lack of respect for the rights of persons deprived of their liberty by all three duty bearers across the Occupied Palestinian Territory remained a cause of concern. There were some positive developments, with the Palestinian Preventive Security Service (PPS) allowing unannounced visits by OHCHR to their detention facilities, while Israel made some initial positive responses to United Nations Children's Fund (UNICEF) regarding the detention of minors.

Israel

40. Israel continued to detain large numbers of Palestinians. As of 1 October 2013, 5,046 Palestinians were in Israeli detention: 135 in administrative detention on security grounds, without charge or trial, with well over half of these held for more than six months, some held for more than three years.[44] As previously stressed by the Secretary-General, only in exceptional circumstances may administrative detention be permissible. One of the most problematic areas where Israeli practices fall short of applicable international standards is the use of "secret evidence" as the basis of detention.[45]

41. The Secretary-General has underlined that there are very serious concerns about Israel's treatment of minors in detention, and UNICEF has found widespread, systematic and institutionalized ill-treatment of Palestinian children in the Israeli detention system.[46] The Israeli authorities have since engaged with UNICEF on its recommendations following the publication of its findings in February 2013, including, for example, piloting a test scheme of summons in place of night arrests.

42. However, there is still cause for serious concern. In a survey of 19 cases of alleged ill-treatment in the second quarter of 2013, UNICEF documented violations including physical abuse, painful restraint techniques, blocking of family access and failure to inform detainees of their right to legal counsel.[47]

43. Concerns extend to all detainees, not just children, as underlined by the death of Arafat Jaradat in the custody of the Shin Bet (Israel Security Agency) on 23 February 2013. According to the chief pathologist of the Palestinian Authority, who was present at a preliminary autopsy performed at the National Institute of Forensic Medicine in Israel, his body showed clear signs of torture. Reportedly, the autopsy listed no cause of death,

[42] A/HRC/22/35/Add.1, para. 10.

[43] See http://www.jpost.com/Defense/Palestinians-say-one-man-killed-one-wounded-by-IDF-shelling-in-Gaza-330325.

[44] Source: B'tselem (as of 30 September 2013); Addameer (as of 1 October 2013).

[45] A/67/372, paras. 26 and 27.

[46] A/HRC/24/30, paras 56–57; CRC/C/ISR/CO/2-4, paras. 35–36.

[47] www.unicef.org/oPt/UNICEF_oPt_Children_in_Military_Detention_Bulletin_No_1_October_2013.pdf.

although an investigation into the circumstances of Jaradat's death is ongoing.[48] The lack of accountability for such allegations remains a very serious concern.

Palestinian Authority

44. The recent willingness of the PPS to allow OHCHR free and unannounced access to detention facilities is encouraging. It is an important step forward that will hopefully be continued and replicated by all Palestinian detaining authorities.

45. Concerns remain regarding the arbitrary detention and ill-treatment of detainees in the custody of the PPS and the Palestinian General Intelligence Service (GIS), including detainees linked to political opposition groups. While ill-treatment of detainees in GIS custody is not systematic, OHCHR documented a pattern of ill-treatment against those who do not make confessions. In several cases, detainees have alleged been blindfolded, handcuffed, slapped in the face and kicked in the legs. OHCHR also documented five cases during the reporting period where the authorities allegedly held detainees incommunicado and used sleep deprivation and stress positions. In at least one case, the detainee alleged multiple violations that may have amounted to torture.

46. OHCHR was only able to interview a small sample of detainees held by PPS in the latter part of the reporting period, but it documented one case in which a detainee alleged that he was held in stress positions, subjected to sleep and sunlight deprivation and held incommunicado for 14 days. Several detainees reported being held incommunicado in the first two weeks of detention when detainees tend to be most vulnerable. As recorded on many previous occasions, both GIS and PPS continued to detain suspects arbitrarily despite orders to release detainees by the courts, thereby undermining the rule of law.[49]

De facto authorities in Gaza

47. Arbitrary detention, torture and ill-treatment by the de facto authorities remained issues of concern in Gaza (see paras. 62–66 below). OHCHR received numerous reports of persons being arbitrarily detained for periods of up to a few months by the internal security agency across the Gaza Strip. Many detainees were allegedly subjected to *shabeh*[50] and sleep deprivation, with their heads covered with a bag for from a few days up to a few weeks. Detainees were reportedly allowed to remove the bag during prayers but, in most cases, not during interrogations. At meal times, most of the detainees were only allowed to lift the bag above their nose. Several detainees reported exposure to further ill-treatment and, at times, torture, including being hit on the soles of their feet, having their head hit against a wall and being slapped in the face or beaten with sticks, rubber tubes or lashes on other parts of their body.

48. In August 2013, two men were summoned to the internal security agency in northern Gaza and allegedly detained, interrogated and tortured because one of the men was involved in a public disagreement over a political issue. Both were blindfolded after arriving at the agency and accused of inciting people against the de facto authorities. One of the men said he was slapped in the face, kicked and beaten with sticks on his legs and on

[48] See www.haaretz.com/news/diplomacy-defense/autopsy-shows-palestinian-prisoner-died-from-torture-says-pa-chief-pathologist-1.505545; for further information see Public Committee against Torture in Israel (PCATI).

[49] A/HRC/19/20, para 42.

[50] *Shabeh* entails holding a stress position for extended periods of time.

the soles of his feet. The other was reportedly beaten with sticks and a lash, and made to stand on one leg with arms lifted, while being beaten on the leg he was standing on.[51]

49. Detainees were held longest at the interrogation centre of the security agency in Gaza City and were allegedly prevented from meeting with their families during the interrogation phase which, in some cases, lasted several months. If at all, detainees were reportedly only able to meet their lawyers after the interrogations were completed and then only in the presence of security agency officials. This was the case of a 27-year-old man who was arrested by the internal security agency in April 2013 for collaborating with Israel. He was subjected to *shabeh* and sleep deprivation, and was only allowed to see his family after a month of detention, with no access to his lawyer during that period.[52]

2. Accountability

Israel

50. According to an Israeli NGO, in 2012, Israeli Military Police Criminal Investigation Division opened 103 investigations into allegations of criminal offences by members of the IDF against Palestinians and their property in the Occupied Palestinian Territory. This represented response to approximately 40 per cent of allegations received, compared to 62 per cent between 2000 and 2011.[53]

51. Available information indicates that not a single criminal investigation was opened into allegations of violations of international humanitarian law in Gaza by the IDF during the escalation of tension in November 2012.[54] A Palestinian human rights NGO appealed 13 decisions not to open investigations; each appeal was either rejected or pending as of 8 November 2013.[55]

52. In the West Bank, criminal investigations were immediately opened in 12 of the 20 Palestinian deaths in which the IDF were implicated during the reporting period, including some of those documented above.[56] It appears that some cases were not opened because of claims that firearms were used against the IDF.

53. Many human rights violations committed by the IDF during law enforcement operations were not investigated, both in the West Bank and in Gaza. A revised policy adopted by the Military Advocate General in 2011 to automatically open investigations into certain cases applies only where a Palestinian is killed outside of "an activity with clear elements of combat," and excludes Gaza.[57] For cases outside the scope of the policy, a criminal investigation is not normally opened unless concerns are raised during an operational debriefing.[58]

54. Even when opened, criminal investigations are beset with delays and other problems and rarely result in indictments. According to information collected by human rights organizations, only six IDF soldiers have been convicted of offences related to the deaths of Palestinians since September 2000, although over 179 such investigations were opened

[51] Source: OHCHR-oPt.

[52] Ibid.

[53] See http://www.yesh-din.org/userfiles/file/datasheets/Law%20Enforcement%20upon%20-%202012.pdf.

[54] Also A/HRC/22/35/Add.1; A/HRC/24/30.

[55] Source: Palestinian Centre for Human Rights (PCHR).

[56] Source: B'tselem.

[57] See http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx; A/66/356, para. 18.

[58] See A/HRC/12/48, para. 121 for examples of shortcomings of operational debriefings.

between 2003 and 2012.[59] There was only one indictment of a soldier in relation to the killing or serious injury of a Palestinian during this reporting period. In this case, the soldier was convicted of negligent homicide of a Palestinian crossing the wall, and received a seven-month prison sentence.[60] As previously mentioned by the Secretary-General, the Turkel Commission made a number of recommendations regarding accountability for violations of international law.[61] In 2013, there were reports that the Ministry of Justice was forming a commission to study the recommendations.[62] However, by the end of the reporting period there had been no formal public announcement regarding any steps taken in that regard.

55. The lack of effectiveness of investigations into allegations of torture and ill-treatment by the Israeli security forces continues to be a cause of serious concern. Impunity for Israeli security officers is particularly prevalent, with not a single investigation into the 776 complaints made since 2001.[63] The effectiveness of the investigative system appears to be undermined, in part, by the lack of independence of the investigators.[64] Although in 2013, Israel announced the establishment of a new independent investigative mechanism for such complaints, as of November 2013, it was not yet operational. With regard to such allegations against the IDF, judicial responses, such as the conviction in November 2013 of two soldiers for beating a Palestinian in their custody, remain rare.[65]

56. Palestinians continue to face a barrage of legal and procedural barriers when seeking to access remedies for violations by the IDF.[66] Under the presiding tort law of 1952, the State is not civilly liable for acts by the IDF which are "performed in the course of a wartime action".[67] In the reporting period alone, over 30 civil cases were dismissed at the preliminary stages on the basis of this broad exemption.[68] One exceptional case was Israel's agreement to pay US$50,000 in compensation to the families of three boys killed in northern Gaza in 2001.[69]

Palestinian Authority

57. The lack of effective and transparent investigation into cases of alleged unlawful killing, torture and ill-treatment involving the Palestinian security forces is of serious concern. Of the five investigative committees established in 2012 to look into various allegations, the report of only one committee was published, and it did not provide details of any action taken against perpetrators.[70] There is also a grave failure to properly investigate allegations of torture and ill-treatment. The Independent Commission for Human Rights (ICHR) had filed 124 such complaints in respect of the West Bank as of 31

[59] See http://www.yesh-din.org/postview.asp?postid=263.

[60] Source: Yesh Din and B'tselem; the sentence was reported as nine months in A/HRC/24/30, para. 47.

[61] A/68/502, para. 29.

[62] See http://www.jpost.com/Diplomacy-and-Politics/Is-govt-following-Turkels-ideas-on-probing-war-crimes-323038.

[63] As of July 2013, according to PCATI.

[64] See http://www.stoptorture.org.il/files/PCATI_eng_web.pdf.

[65] See http://www.timesofisrael.com/soldiers-heading-to-prison-for-abusing-palestinian/.

[66] See http://adalah.org/Public/files/English/Publications/Articles/2013/Obstacles-Palestinians-Court-Fatmeh-ElAjou-05-13.pdf.

[67] Civil Wrongs (Liability of the State) Law 5712-1952, art. 5.

[68] Source: PCHR.

[69] See http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=9861:12-years-following-their-deaths-pchr-succeeds-in-ensuring-remedy-for-3-children-of-lubbad-banat-and-al-madhoun-families&catid=145:in-focus.

[70] A/68/502, paras. 44–47.

October 2013, but consistently received outright denials from the authorities without initiation of a thorough and effective investigation.

De facto authorities in Gaza and armed groups

58. According to available information, no measures have been taken by the de facto authorities in Gaza to investigate credible allegations of violations of international humanitarian law by the said authorities or armed groups in Gaza, including the direct targeting of civilians and the indiscriminate firing of rockets towards Israel.[71]

59. Media reports, citing the spokesperson of the Interior Ministry of the de facto authorities, claim that following an investigation of the summary execution of alleged collaborators during the November 2012 escalation of tension,[72] measures had been taken against four prison officials "who had failed to do their jobs".[73] Besides lacking transparency, there is insufficient information to determine if any investigation met international standards. It appears that the armed men directly responsible for the killings continue to enjoy impunity.

60. In July 2013, at least 10 people were abducted and eight severely beaten by armed masked men in Gaza. The victims reported that the abductors presented themselves as members of Al-Qassam Brigades, the military wing of Hamas, and accused them of being involved in the Tramadol[74] trade. Officials of the de facto authorities were allegedly involved in providing the armed men with information about the location of the victims. During their abduction, the men — who were covered with bruises and at least eight of whom had broken legs — were allegedly blindfolded, handcuffed and severely beaten on numerous occasions, including with iron rods, prior to their release. At the time of writing this report, there were no indications that any investigations into these incidents were being conducted by the de facto authorities in Gaza.

3. Freedom of expression and peaceful assembly

Israel

61. During the reporting period, there continued to be serious concerns about the level of force used by Israeli security forces at demonstrations in the West Bank. For example, on 22 February 2013, in Abud village, Sameeh Asfour was fatally injured by an RCMB fired at demonstrators assembled to express solidarity with Palestinians in Israeli prisons.[75] Another reported incident took place on 19 July 2013 at a demonstration against settlement expansion and the seizure of a well by settlers. On that occasion a woman working for an Israeli NGO monitoring the demonstration was shot in the leg with an RCMB.[76]

Palestinian Authority

62. In the West Bank, including East Jerusalem, OHCHR continued to receive reports that journalists faced arrest and questioning for work deemed to be critical of the authorities. OHCHR documented cases of Palestinians arrested for distributing political leaflets, as reportedly was the case in the incidents at Askar and El Far'a refugee camps.

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[71] Also A/HRC/22/35/Add.1; A/HRC/24/30.

[72] A/HRC/22/35/Add.1, paras. 40–45.

[73] See http://wap.npr.org/news/World/186975387?start=10.

[74] Tramadol is a painkiller that is sold illegally without a prescription; see http://tinyurl.com/po9oukw.

[75] See A/68/502, paras. 37 and 40; A/66/356, paras. 20–24; A/24/30, para. 45.

[76] http://www.btselem.org/press_releases/20130730_stop_using_rubber_coated_bullets_against_demonstrators.

While other legitimate charges may have been brought against the suspects in those cases, the fact that the authorities considered the distribution of critical political pamphlets a criminal issue is of concern.

De facto authorities in Gaza

63. The de facto authorities in Gaza continued to restrict the enjoyment of the rights to freedoms of expression and opinion and of peaceful assembly. Members of political parties, journalists, social media activists and academics were arbitrarily detained. They reported being ill-treated and, in some cases, tortured because of opinions expressed through different media platforms, including social media, and their involvement in activities considered to be political and against the de facto authorities or their policies.[77]

64. In August 2013, at least 20 Fatah members were arbitrarily detained and many reportedly ill-treated. The Fatah members were alleged to have distributed money to families of Fatah supporters who had been killed and injured during the 2007 intra-Palestinian clashes. Some were detained for weeks without charges and allegedly subjected to sleep deprivation, *shabeh*, beatings and extensive interrogation. Most stated they were obliged to sign documents stating their commitment to cease engaging in any political or other activities directed against the de facto authorities.[78]

65. A number of individuals were detained in relation to Tamarod.[79] In one case, a 40-year-old employee of the Palestinian Authority was detained for approximately 18 hours by the internal security agency in Rafah in September 2013. He was interrogated about his involvement with Tamarod and reportedly subjected to *shabeh* and other ill-treatment and repeatedly told to confess that he had received documents related to Tamarod. He was released, reportedly after the security agency discovered that its intelligence was wrong. In another case, a Fatah activist was arrested by the security agency on two occasions for his alleged pro-Tamarod campaign on Facebook. He was reportedly tortured during detention, threatened with further detention if he opened a new Facebook account, and forced to sign a paper stating that he would not engage in political activities.[80]

66. The de facto authorities also dispersed a number of peaceful demonstrations using excessive or unnecessary force. On 5 May 2013, the police of the de facto authorities forcibly dispersed a peaceful assembly organized by the Popular Front for the Liberation of Palestine protesting against Israel's attacks on Syria. Demonstrators and journalists were beaten with sticks, and some were detained for a few hours. The photography equipment of some journalists was confiscated or damaged.[81] Shortly after, officials of the de facto authorities issued a statement denouncing the use of force against the journalists and apologizing for the "harsh treatment" they had undergone. However, the authorities maintained that the protest was unlawful, arguing that legal procedures had not been followed.[82] The spokesperson of the Ministry of the Interior of the de facto authorities requested that a commission of inquiry be established to investigate the incident. Since then, there has been no indication that this commission has been formed.

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77 Source: OHCHR-oPt.

78 Ibid.

79 *Tamarod* means rebellion. In Gaza, there appear to be a few Tamarod groups that gather followers through social media, independently from any political party. Tamarod is also the name of a protest movement in Egypt.

80 Source: OHCHR-oPt.

81 Ibid.

82 See http://tinyurl.com/o4hw3tn.

67. Another serious issue of concern was the closure of two media offices. On 25 July 2013, the Prosecutor General of the de facto authorities in Gaza issued an order to temporarily close Ma'an News Agency and Al-Arabiya News Channel, accusing them of distributing false news regarding Hamas and its role in relation to political developments in Egypt. Ma'an News Agency reported that the de facto authorities provided it with a list of preconditions to be met in order to reopen the news agency, which were inconsistent with press freedom. Both offices were reopened in mid-November, without preconditions.

4. Death penalty and the right to life

Palestinian Authority

68. On 4 May 2013, the Permanent Military Court in Jenin sentenced a security officer to death by firing squad for collaborating with Israel. In line with recent practice, the Palestinian President did not ratify this or any other death sentences. Pursuant to the President's instruction, Palestinian military courts have retried a number of death-row prisoners and sentenced them instead to terms of imprisonment.

De facto authorities in Gaza

69. Since 2008, courts of the de facto authorities in Gaza have issued 60 and upheld eight death sentences previously issued by the courts of the Palestinian Authority in Gaza.[83] The de facto authorities executed three persons during the reporting period, bringing to a total of 17, the number of executions since its takeover of Gaza.

70. Palestinian Basic Law rightly restricts the jurisdiction of military courts to "military affairs" (art. 101 (2)). In Gaza, under existing laws,[84] the de facto authorities can impose the death penalty for a broad range of crimes, and civilians continue to be tried by military courts[85] despite the recommendations of the United Nations Human Rights Committee.[86] On a number of occasions, the United Nations High Commissioner for Human Rights has urged the de facto authorities to halt executions, and raised concerns about the process by which death sentences were imposed in Gaza.[87] OHCHR consistently documented allegations of denial of the right to receive legal assistance, the use of ill-treatment and torture during interrogations and violations of the right to a fair trial by both civilian and military courts of persons later sentenced to death.

71. In addition, persons sentenced to death are being denied the right to seek pardon or commutation of their sentences. None of the 17 executions in Gaza were ratified by the President, as required under Palestinian law. Moreover, trials failed to meet fair trial standards, which is of heightened concern where the death penalty may be applied.[88]

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[83] Source: PCHR, ICHR, B'tselem. No official figures on the number of persons on death row are available.

[84] Mandatory Criminal Code Ordinance No. 74 of 1936, amended by Egypt's Military Governor Order No. 555 of 2 April 1957 and the Revolutionary Penal Code of 1979.

[85] As of 28 October 2013, 44 death sentences were issued by Military Courts, out of a total of 60 in Gaza.

[86] Human Rights Committee general comment No. 32 (2007) on Article 14, para. 22; also CCPR/CO/70/PER, para. 12; Basic Principles on the Independence of the Judiciary (1985), principle 5.

[87] See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13628&LangID=E.

[88] Ibid.

5. Violence against women

72. Women in the Occupied Palestinian Territory face multiple layers of violence and discrimination. The analysis made by the Special Rapporteur on violence against women in 2005 remains valid. She found that the combination of decades of Israeli occupation, the use of force against Palestinians by Israel, the different forms of resistance used by Palestinians against such use of force and the patriarchy prevailing in Palestinian society expose women to a continuum of violence in all spheres of life.[89]

73. Palestinian NGOs report that violence against women continues to be widespread[90] and so-called "honour killings"[91] remain of concern. Family honour plays a fundamental role in Palestinian society. Although there are no reliable statistics on "honour killings,"[92] in 2012,[93] ICHR documented five such cases across the Occupied Palestinian Territory.[94] However, there appears to be underreporting of cases; 13 additional cases of murder of women were documented as occurring under "mysterious" circumstances, which indicates that the number of "honour killings" may be higher.[95]

74. In 2011, the Palestinian President abolished article 340 of the 1960 Jordanian Penal Code,[96] which had been in force in the West Bank, and which allowed effective impunity for men who kill or injure their wives or female relatives (*maharim*)[97] whom they consider to be involved in adultery. However, this measure has not been effective as provisions establishing mitigating circumstances remain in force, in particular article 98 of the Penal Code,[98] which provides for reduced penalties for a person who commits a crime in a state of great anger resulting from a wrongful and dangerous act on the part of the victim.[99] An NGO study of cases of "honour killings" between 2005 and 2010 showed that the evocation of such mitigating circumstances had dramatically reduced penalties.[100] In eight out of 10 cases, the perpetrators were charged with premeditated murder, which carries life imprisonment,[101] however, in most of the cases, due to a combination of mitigating circumstances and the victim's family's decision to "drop" the victim's personal rights,[102]

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89 A/HRC/13/54, para. 54; E/CN.4/2005/72/Add. 4.

90 Women's Studies Centre and Women's Affairs Center, Palestinian women in the cycle of violence, December 2012.

91 While some Palestinian NGOs prefer the term "femicide", this report follows the terminology used by the Committee on the Elimination of Discrimination against Women.

92 A/HRC/13/54, para 56; also http://www.pwrdc.ps/site_files/Fact%20Sheet%20E%20-%20Womens.pdf.

93 The Women's Centre for Legal Aid and Counselling (WCLAC) recorded 25 cases of gender-based killings between January and October 2013.

94 ICHR, Eighteenth Annual Report, 2012, p. 68.

95 Reportedly, in one case the medical report falsely stated that the cause of the death was natural; see ICHR, Eighteenth Annual Report, 2012, p. 275.

96 Gaza applies the Mandatory Criminal Code Ordinance No. 74 of 1936.

97 *Maharim* means relatives whom one cannot marry. See also OHCHR, "The consistency of applicable Palestinian legislation with international human rights law", 2013, p. 9.

98 Also articles 97 and 99.

99 This provision has been used repeatedly to reduce penalties for perpetrators of "honour killings"; see also Lynn Welchman and Sara Hossain, eds., *'Honour': Crimes, Paradigms and Violence Against Women*, (London, U.K., Zed Books, 2005), pp. 174–176.

100 WCLAC, "Court judgments issued against perpetrators of murders of women", 2011 (in Arabic).

101 Article 328 of the 1960 Jordanian Penal Code establishes the death penalty for premeditated murder. However, ordinarily, this is replaced by life imprisonment.

102 The Jordanian Penal Code provides for the protection of two types of rights: personal and societal; a victim, in this case, the victim's family, can renounce the criminal action related to personal rights. However, victims cannot renounce criminal actions related to societal rights, since they fall outside of the personal sphere.

penalties did not exceed five years. Furthermore, in most of the cases, the perpetrators were close family members, including brothers, fathers and mothers. The study also revealed that only 10 judgments were handed down in such cases between 2005 and 2010.[103]

IV. Recommendations

A. Recommendations to the Government of Israel

75. **Lift the blockade of Gaza to remedy the ongoing punitive measures against the civilian population, and ensure that any measures restricting the freedom of movement of civilians and the transfer of goods from, into and within Gaza are consistent with international law.**

76. **Ensure that the use of force by its security forces, including in the access restricted areas, in situations other than hostilities is in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by carrying out an independent review and any necessary revisions of rules of engagement or regulations on opening fire to ensure their consistency with international law.**

77. **Carry out prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing or injury, torture and ill-treatment and ensure that the investigations are subject to public scrutiny and allow for meaningful victim participation. Prosecute individuals responsible for violations and provide victims with an effective remedy. As an initial step to reforming the investigative system, implement the recommendations contained in the second report of the Turkel Commission.**

78. **Immediately cease any demolitions or plans for demolitions that would result in the forcible transfer or forced eviction of Palestinians, particularly in the vulnerable areas of the Jordan Valley, the periphery of Jerusalem and the South Hebron Hills, including Massafer Yatta. Permit and facilitate the return of those communities already subjected to forcible transfer or eviction to the their original dwellings and ensure adequate housing and legal security of tenure.**

79. **Charge or release any detainees held in administrative detention and bring to an end the administrative detention regime.**

80. **Implement the recommendations made by UNICEF and the Committee on the Rights of the Child[104] regarding the treatment of Palestinian children in detention.**

B. Recommendations to the Government of the State of Palestine

81. **Ensure that the use of force and treatment of detainees by all security forces is in compliance with international human rights law and principles, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and that the new PPS Code of Conduct is applied in practice. Conduct regular training on international human rights law, the Basic Principles and the PPS Code of Conduct for security officers, and investigate and review operations to ensure regular compliance.**

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[103] WCLAC, "Court judgment", 2011 (see footnote 113 above).

[104] UNICEF, *Children in Israeli Military Detention: Observations and Recommendations*, February 2013; CRC/C/ISR/CO/2-4, especially paras. 35 and 36.

82. Conduct prompt, thorough, effective, independent and impartial investigations into allegations of unlawful killing, injury, torture and ill-treatment by security forces, including, for example, the killing of Amjad Odeh at Askar refugee camp. Ensure that such investigations are transparent, that the results are made public and that those responsible are brought to justice in fair trials.

83. Publish in full the reports of investigative committees.[105]

84. Ensure that court decisions ordering the release of detainees are respected and promptly enforced and take appropriate measures against those institutions and individuals not respecting such orders.

85. Ensure that journalists and political activists are able to carry out their work without hindrance, in particular, ensure that security services refrain from arresting or harassing people for distributing or publishing materials that are critical of the Palestinian Authority.

86. Officially declare a formal moratorium on the death penalty, pending abolition.

87. Adopt necessary measures to effectively investigate, prosecute and bring to justice perpetrators of all acts involving violence against women and, in particular, amend the criminal legislation in order to prevent impunity and reduced penalties for so-called "honour crimes".

C. Recommendations to the de facto authorities and Palestinian armed groups in Gaza

88. The de facto authorities in Gaza must respect international humanitarian law, especially in relation to the principle of distinction, and ensure accountability for violations.

89. Palestinian armed groups in Gaza must respect international humanitarian law.

90. The de facto authorities must refrain from unlawful restrictions on free speech and peaceful assembly, including closing entire media outlets, and must allow journalists, political activists, social media activists, academics and others to carry out their work and exercise their public freedoms without hindrance, including freedom from arbitrary arrest, torture and ill-treatment. The authorities must investigate any violations against such persons.

91. The de facto authorities must take all necessary measures to ensure that detentions are in line with international human rights norms and standards, and must ensure the immediate end of the use of torture and ill-treatment by its security forces. They must promptly, thoroughly, effectively, independently, impartially and transparently investigate all allegations of torture and ill-treatment, as well as impose appropriate sanctions against those responsible based on fair trials, and provide victims with adequate, effective and prompt reparations for the harm suffered.

92. The de facto authorities in Gaza should impose an immediate moratorium on executions, and cease the use of military tribunals to try civilians.

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[105] See para. 56 above.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights in 2013

Summary

The human rights situation in Afghanistan continues to face serious challenges, with the 2014 elections and scheduled conclusion of security transition creating an environment of uncertainty, including for human rights. Many Afghans, especially women, fear that achievements made in the protection and promotion of human rights since 2001 will be increasingly at risk. There are signs that hard-won gains may be forfeited for the sake of short-term political goals, undermining the fragile stability to which respect for human rights and the rule of law has contributed. In this context, I was pleased to pay my first visit to Kabul from 15 to 17 September 2013 to meet with the Government and other stakeholders. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide strong support to the human rights mandate of the United Nations Assistance Mission in Afghanistan (UNAMA).

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Protection of civilians in the armed conflict continues to be a serious concern. In the first 11 months of 2013, civilian deaths and injuries from conflict-related violence increased by 10 per cent compared to the same period in 2012. The rise in civilian casualties marks a return to the high numbers of civilian deaths and injuries recorded in 2011. While three quarters of all civilian deaths and injuries were caused by anti-Government elements, a rise in civilian casualties caused by Afghan Government forces was documented, particularly during ground engagements. Child casualties were 36 per cent higher than those recorded in 2012. During the first 11 months of 2013, at least nine children were killed or injured every two days in Afghanistan. July and August 2013 were the worst months on record for children, with 214 injured and 196 killed in the armed conflict.

Violence, discrimination and harmful practices against women remain systemic and entrenched; landmark protections for women, including the 2009 Law on the Elimination of Violence against Women, have been questioned. UNAMA/OHCHR found that, while the Afghan authorities registered more reports of violence against women under the Law on the Elimination of Violence against Women in 2013, the number of prosecutions and convictions remained low, with the majority of cases settled by mediation.

As security transition proceeds in 2014 and Afghan National Security Forces take full responsibility for civilian protection and command and control of all military operations, UNAMA/OHCHR documented Afghan forces' continued use of torture against conflict-related detainees in a number of detention facilities and denial of detainees' access to legal counsel.

The highly regarded, credible and effective work of the Afghanistan Independent Human Rights Commission (AIHRC), a key element of the Karzai Government's 12-year legacy, including on human rights, was undermined during 2013. The process for appointing new Commissioners was not inclusive, transparent or participatory, as required by the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). This threatened the independence and effectiveness of the Commission's work. During my visit to Afghanistan in September 2013, I raised this issue with national and international partners. In November 2013, the AIHRC underwent its regular accreditation review by the Sub-Committee on Accreditation of the International Coordinating Committee for National Human Rights Institutions, which recommended a deferral of the decision on accreditation for one year and other measures to assist the AIHRC to retain its "A" accreditation status. I remain committed to supporting and strengthening this critical national institution.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006 and resolution 14/15 of 18 June 2010 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan. Since the last report (A/HRC/16/67), the human rights situation in Afghanistan has remained deeply challenging.

2. Between 15 and 17 September, I had the opportunity to make a short visit to Kabul where I met President Karzai, senior ministers, members of civil society and our United Nations and bilateral partners. I observed that the country is clearly at a critical juncture, with the ongoing political, security and economic transition concluding in 2014, all of which will have an impact on human rights. There have been some distinct human rights achievements during the past 12 years, but they are fragile, and many Afghan counterparts have expressed concerns that the overall human rights situation is deteriorating on several fronts.

3. Deeply concerning is the notable rise in the number of civilian casualties, indicating that the impact of the armed conflict on the civilian population has not abated in any significant way. In the first 11 months of 2013, civilian deaths and injuries increased by 10 per cent compared to the same period in 2012. This rise reflects a return to the high numbers of civilian deaths and injuries recorded in 2011. The principal causes include the increased indiscriminate use of improvised explosive devices (IEDs) and more ground engagements between Afghan forces and anti-Government elements (AGEs), particularly in civilian populated areas. After IEDs, ground engagements were the second leading cause of civilian deaths and injuries, a new and disturbing trend in 2013.

4. The year also saw an increase in targeted killings of civilians, especially government officials, by anti-Government elements. Although AGEs caused 75 per cent of civilian casualties, the number of civilian casualties caused by the actions of Afghan National Security Forces (ANSF), including the police, has also increased. The increasing pace of transition of security responsibilities from international military forces to Afghan forces and the closure of international forces' military bases has been met with increased ground engagement between Afghan forces and AGEs, and has been accompanied by rising civilian casualties. Children also increasingly became victims of the conflict. The number of child casualties reported and verified between 1 January and 30 November 2013 was 36 per cent higher than that recorded during the same period in 2012.

5. Torture and cruel, inhuman and degrading treatment of conflict-related detainees while in Afghan National Police (ANP) and National Directorate of Security (NDS) custody continues to be reported and documented by UNAMA/OHCHR. On 20 January 2013, UNAMA/OHCHR released its second major report on human rights concerns in places of detention, entitled Treatment of Conflict-Related Detainees in Afghan Custody: One Year On. Torture was found to be prevalent in several ANP and NDS detention facilities and was largely used to obtain a confession or information.

6. UNAMA/OHCHR released a report on 8 December 2013 entitled A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, in which it reported limited results in the implementation of the 2009 Law on the Elimination of Violence against Women (EVAW law). Over the past year, Afghan authorities registered 28 per cent more reported incidents of violence against women under the EVAW law. However, use of the law by prosecutors and courts as a basis for filing indictments and obtaining convictions remained low, with most cases mediated through traditional dispute resolution.

7. On 18 September 2013, the Government of the Netherlands published a list of 5,000 victims who had disappeared or been killed during the communist regime in Afghanistan between 1978 and 1979. The publication of these "death lists", compiled by Afghan authorities at the time, had some effect on mobilizing victims' families, civil society and the President's Office on the issue of transitional justice. The AIHRC conflict mapping report, which documents serious international crimes and human rights violations committed in Afghanistan between 1977 and 2001, was not formally submitted to the President's Office in 2013.

8. On 16 June 2013, President Karzai appointed five new Commissioners and reappointed four serving Commissioners to the AIHRC. Civil society actors, donors and UNAMA raised concerns that the selection process for the new Commissioners failed to meet the Paris Principles. During my visit to Afghanistan in September 2013, I expressed concern at the non-consultative process leading to the appointments and its potential impact on the "A" status of the AIHRC. A decision on accreditation was deferred for one year following a review of the AIHRC on 18 November 2013 by the Sub-Committee on Accreditation of the International Coordinating Committee for National Human Rights Institutions (ICC). This decision outlined concerns for the Government and the AIHRC to address, including changes to the selection and appointment process and increased State financing of the AIHRC operations budget in line with the Paris Principles, failing which a downgrade to "B" status would be likely.

II. Protection of civilians

9. Conflict-related violence is increasingly affecting the civilian population. Changes in the political and security landscape have impeded the protection of civilians and further restricted the full enjoyment of human rights. The heightened pace of transition of security responsibilities from international military forces to Afghan forces and the closure of international forces' military bases was met with increased attacks by AGEs (the Taliban and other armed opposition groups) on ANSF, mainly at checkpoints, on strategic highways, in some areas that had been transitioned and in districts bordering neighbouring countries.

10. In the first 11 months of 2013, civilian deaths and injuries from conflict-related violence increased by 10 per cent compared to the same period in 2012. The rise in civilian casualties reverses the downward trend recorded in 2012, and reflects a return to the high numbers of civilian deaths and injuries recorded in 2011, the highest figures recorded by UNAMA/OHCHR. May 2013 was the deadliest month of the conflict with the highest number of civilian deaths, while August was the second. Between 1 January and 30 November 2013, UNAMA/OHCHR documented 7,899 civilian casualties (2,730 civilians killed and 5,169 injured). UNAMA attributed 75 per cent of civilian deaths and injuries to AGEs, 10 per cent to pro-Government forces (ANSF and international military forces) and 11 per cent to ground engagements between pro-Government forces and AGEs in which attribution was not possible. The remaining 4 per cent of civilian casualties were unattributed and were caused mainly by explosive remnants of war.

11. As in previous years, improvised explosive devices (IEDs) used by AGEs caused the most civilian casualties. Ground engagements between Afghan forces and AGEs, particularly in civilian populated areas, were the second leading cause of civilian deaths and injuries, representing a trend and an increasing threat to civilians in 2013. Security gaps and contests between AGEs and pro-Government forces over territory gave rise to increased numbers of armed clashes, particularly in the southern and eastern regions, with civilians increasingly being killed or injured in the crossfire or by IEDs planted by AGEs. UNAMA/OHCHR also documented increased civilian casualties attributed to AGEs,

including targeted killings, attacks against civilian government workers, abductions and killings, and high levels of threats and intimidation.

12. Between 1 January and 30 November 2013, UNAMA documented 90 civilian deaths and 177 injuries (267 civilian casualties) from explosive remnants of war, a 48 per cent increase from 2012. Eighty-one per cent of the victims were children. This sharp increase coincides with an increase in ground engagements between parties to the conflict, making unexploded ammunition and ordnance more likely to be left behind. A second cause is the closure of International Security Assistance Force (ISAF) bases and firing ranges, many of which have not been sufficiently cleared of unexploded ordnance prior to their closure.

A. Anti-Government elements

13. Seventy-five per cent of all civilian casualties during 2013 were attributed to AGEs, which includes a range of armed opposition groups, compared with 81 per cent for the same period in 2012. Between 1 January and 30 November 2013, IEDs and suicide/complex attacks by AGEs together accounted for 49 per cent of all civilian deaths and injuries. UNAMA/OHCHR documented a 44 per cent reduction in civilian casualties from pressure-plated IEDs, but also noted an 83 per cent increase in civilian deaths and injuries from the use of remote-controlled IEDs.

14. Throughout 2013, AGEs continued to target and kill civilians who worked for or were perceived to support the Government or Afghan and international military forces. Between 1 January and 30 November, UNAMA/OHCHR documented 740 civilian deaths and 341 injuries (1,081 civilian casualties) from targeted killings — on a par with the same period in 2012. In many cases, the Taliban claimed responsibility for the killings on their website. On 27 November 2013, for example, the Taliban claimed responsibility for attacking and killing six non-governmental organization staff members in Faryab province.

15. Deliberate targeting of civilian government institutions by AGEs increased in 2013, with attacks against civilian government employees, offices, district headquarters and other civilian government structures documented throughout Afghanistan. UNAMA/OHCHR documented four attacks against court-houses: in Farah on 3 April, in Kabul on 11 June, in Marja district in Helmand province on 12 May and in Pashtunkot district of Faryab province on 23 April, causing 57 civilian deaths and 145 injuries (202 civilian casualties) including judges, prosecutors, legal and clerical staff. The Taliban claimed responsibility for the attacks and issued a public statement announcing their intention to target and kill judges and prosecutors.

16. UNAMA/OHCHR observed a pattern of threats and attacks by AGEs against religious leaders and documented 23 incidents in which religious leaders or places of worship were directly threatened or attacked, resulting in 15 civilian deaths and seven injuries. The majority of the attacks targeted mullahs performing funeral ceremonies for deceased members of Afghan security forces and religious figures who expressed public support for the Government.

B. Pro-Government forces

17. In the first 11 months of 2013, UNAMA/OHCHR documented 300 civilian deaths and 499 injuries (799 civilian casualties) attributed to pro-Government forces, a 43 per cent increase from 2012. The rise is attributed to an increase in offensive operations and counter-attacks by ANSF against AGEs in contested areas. These operations also damaged civilian properties and in some areas displaced civilians on a large scale. For example, Afghan forces' operations in Qaysar district, Faryab province, on 18 to 20 November led to

the displacement of 1,000 families, requiring a humanitarian response which was made more urgent by the cold weather and the onset of winter.

18. Despite Afghan forces leading almost all military operations countrywide, a permanent structure does not yet exist in relevant ANSF bodies to systematically investigate allegations of civilian casualties, initiate remedial measures and take follow-up action. The Civilian Casualties Tracking Team in the Presidential Information Coordination Centre, established in May 2012, only records reports of civilian casualties received from security bodies and does not receive complaints from individuals or organizations.

19. Human rights violations attributed to Afghan Local Police (ALP), including violations leading to civilian casualties, are a growing concern; in the first 11 months of 2013, UNAMA/OHCHR documented 29 civilian deaths and 78 injuries in 60 separate incidents, more than double the number of incidents and casualties compared to the same period in 2012. In most cases, the deaths and injuries resulted from ALP members committing human rights violations including punishments and revenge killings, carrying out illegal searches and alleged accidental shootings in highly questionable circumstances. In response to these violations, UNAMA/OHCHR has recommended the creation of a national-level accountability mechanism in the ALP Directorate at the Ministry of Interior Affairs, such as the appointment of a military prosecutor, to enable timely, independent and transparent investigations and prosecution of alleged ALP crimes and human rights violations.

20. The escalated pace of ISAF base and firing range closure has led to concerns that bases and firing ranges have not been sufficiently cleared of unexploded ordnance prior to closure. At the end of November 2013, following intensive advocacy by UNAMA/OHCHR, ISAF issued a standard operating procedure on base and firing range closure/transfer to ensure clearance of explosive remnants and unexploded ordnance before bases and ranges are closed or transitioned in 2014. ISAF also agreed to review 700 bases and ranges that have closed since 2001.

21. While UNAMA/OHCHR recorded a decrease in civilian casualties from aerial operations in the first 11 months of 2013, civilian deaths and injuries from remotely piloted aircraft (drones) more than tripled with 36 civilian deaths and 12 injuries. On 7 September, a drone strike in Watapur, Kunar province, killed 10 civilians, including four children and four women. UNAMA/OHCHR has urged international military forces to review thoroughly pre-engagement targeting criteria and required precautionary measures to reduce civilian casualties from drone strikes.

C. Children and armed conflict

22. Children continued to suffer disproportionately from the impact of the armed conflict. Child casualties reported and verified between 1 January to 30 November 2013 were 36 per cent higher than those recorded during the same period in 2012. UNAMA verified 705 incidents out of a total of 842 reported incidents in which children were killed or maimed. During this period, at least 491 children (318 boys, 110 girls and 63 gender unknown) were killed and a further 1,018 children (577 boys, 236 girls and 205 gender unknown) were injured. During the first 11 months of 2013, at least nine children were killed or injured every two days in Afghanistan.

23. Ground engagements, which include crossfire, shootings, rocket and artillery shelling, and hand grenade attacks, caused the highest number of child casualties: 552 deaths and injuries in total. AGEs were responsible for nearly 40 per cent and international and Afghan security forces were responsible for almost 20 per cent of casualties caused during ground engagements. Improvised explosive devices were the second leading cause

of child deaths and injuries, amounting to 448 casualties. In 2013, explosive remnants of war claimed the lives of 315 children, more than 83 per cent of them boys. Suicide attacks by AGEs resulted in 116 child casualties, with the highest numbers in the central region. Air strikes by international forces killed 35 children and injured 19 between January and November.

24. July and August 2013 were the worst months of the armed conflict on record for children, with 214 children killed and a further 196 wounded. At least 511 child casualties — one third of the total child casualties during the first 11 months of the year — were reported from the eastern region, a direct result of increased ground engagements between the parties to the conflict. In the southern region, 307 child casualties occurred during the first 11 months of 2013 and were mainly the result of IEDs. AGEs were responsible for more than 53 per cent of the total child casualties, pro-Government forces were responsible for 11 per cent, and 36 per cent remained unattributed to any party to the conflict.

25. Over 11 months, 91 incidents of attacks against schools and 34 incidents of attacks against hospitals were reported. UNAMA/OHCHR, in cooperation with other members of the United Nations-led Country Task Force on Monitoring and Reporting on grave violations against children in armed conflict, was able to verify 44 incidents of attacks against schools and 25 incidents of attacks against hospitals. Attacks against schools included deliberate targeting and incidents that impeded access to education, including crossfire incidents, IED detonations near schools and abductions, killing, injuring, intimidation and harassment of education personnel. Attacks against schools were mostly reported from the eastern, northern and the north-eastern regions. Unverified reports suggest that large numbers of schools remained closed in Nuristan, Helmand and Kandahar provinces due to insecurity and lack of teachers. Of the total verified reports of such attacks, 33 were attributed to AGEs, and three to ANSF, with the remaining eight unattributed.

26. Of the 38 reports of underage recruitment into armed groups and armed forces in 2013, UNAMA/OHCHR was able to verify 25 incidents. Of the verified incidents, 43 boys between the ages of 11 and 17 were recruited, allegedly to carry out different types of military activities, such as planting IEDs, transporting explosives, carrying out suicide attacks, conducting policing duties and taking part in armed clashes. Twenty of the 43 recruited boys allegedly lost their lives while planting or assembling IEDs or carrying out suicide attacks. During 2013, Kandahar and Helmand provinces in the south, Farah province in the west, and Paktya province in the southeast remained centres for child recruitment. Reportedly, AGEs were responsible for recruiting 29 boys, Afghan Local Police 13 boys and the Afghan National Police at least 1 boy. AGEs and Afghan security forces, namely the Afghan National Police and the Afghan Local Police, remain listed for child recruitment in the annual report of the Special Representative of the Secretary-General for Children and Armed Conflict.

27. Grave violations against children also included abductions, with 13 verified incidents from the eastern, south-eastern and the southern regions of the country. At least 7 of the 27 victims were executed following abduction. Children were abducted for reasons including recruitment into armed groups, punishment for alleged suspicious activities or the activities of their family members, and reprisals. Seven incidents of sexual violence in the armed conflict were documented, of which four were verified. Three incidents in which four boys were abused were attributed to Afghan National Police and the Afghan Local Police, and one incident to the Taliban. AGEs, including the Taliban, denied humanitarian access in the areas under their control. UNAMA/OHCHR was able to verify 27 such incidents out of 40 reported. Verified incidents included abduction, intimidation, killing and injury of humanitarian staff, mostly of de-miners, denying access to vaccinators and causing damage to facilities run by humanitarian organizations.

28. Throughout 2013, UNAMA/OHCHR provided technical support to the Government in implementing the Action Plan for the Prevention of Underage Recruitment. In June 2013, UNAMA/OHCHR, on behalf of the Country Task Force on Monitoring and Reporting, responded to the Government's progress report on implementation of the Action Plan. In August 2013, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and UNICEF undertook a joint mission to Afghanistan focused on supporting the Government in developing a "road map towards compliance" aimed at expediting implementation of the Action Plan. The road map was endorsed in principle at a high-level meeting of the Inter-ministerial Steering Committee on Children and Armed Conflict on 14 August. Once fully endorsed by the Government, UNAMA/OHCHR will focus on supporting the Government in devising a strategy to implement the road map.

III. Protection from arbitrary detention and respect for fair trial rights

29. Over the last year, Afghanistan's prison population increased from 25,003 adult and juvenile detainees and prisoners in 2012 to 32,157. Based on October 2013 statistics from the Interior Affairs, Justice and Defence Ministries, these figures represent an increase of 7,154 detainees and prisoners housed in Central Prisons Directorate facilities and the juvenile rehabilitations centres across Afghanistan and in the Afghan Detention Facility in Parwan. This increase includes 2,440 detainees and prisoners transferred by the United States of America to Afghan custody on 25 March 2013 under a March 2012 agreement that handed over control of the United States-run Detention Facility in Parwan to the Afghan Ministry of Defence.

30. Persons detained in connection with the armed conflict (hereinafter "conflict-related detainees") held by the Afghan National Police (ANP) or the National Directorate of Security (NDS) in pretrial custody, however, are not included in these statistics. In the majority of cases, conflict-related detainees are held arbitrarily for extended time periods, in violation of legally prescribed time limits and due process guarantees in Afghan law. Most of these detainees do not have access to defence counsel, have not been informed of the charges against them and have not been brought before a tribunal while in ANP and NDS custody.

31. Treatment of conflict-related detainees while in ANP and NDS custody remains a major human rights concern. On 20 January 2013, UNAMA/OHCHR released its second major report on human rights concerns in places of detention, entitled Treatment of Conflict-Related Detainees in Afghan Custody: One Year On. Based on interviews with 635 conflict-related detainees in 89 Afghan facilities covering 30 provinces, torture was found to persist in a number of detention facilities, despite efforts by the Government and international partners to address it. More than half of conflict-related detainees interviewed had experienced torture and ill-treatment as defined and prohibited under Afghan and international law. Torture was found to be prevalent in several ANP and NDS detention facilities and took the form of coercive interrogation techniques in which Afghan officials inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information.

32. UNAMA/OHCHR made 64 recommendations to the Government and international partners to prevent torture and ill-treatment, ensure accountability and build the capacity of State institutions. One key recommendation is the creation of an independent national preventive mechanism on torture in line with the Optional Protocol to the Convention against Torture — which Afghanistan has not yet ratified — which could be located within the AIHRC with authority and enhanced capacity to inspect all detention facilities, make detailed technical recommendations and assist institutions with follow-up implementation. I

also encourage the Government to invite the Special Rapporteur on torture to make a country visit and assist in these important reform efforts.

33. In response to the UNAMA/OHCHR report, on 22 January 2013, President Karzai established a fact-finding presidential delegation to investigate the allegations of torture and ill-treatment contained in the report. UNAMA/OHCHR cooperated fully with the delegation. In February 2013, the delegation publicly announced that 48 per cent of the detainees it interviewed had experienced torture and ill-treatment at the time of arrest and during interrogation by ANP and NDS officials. The delegation also noted that two thirds of the detainees who were interviewed had not had access to a defence lawyer.

34. After receiving the delegation's report, on 16 February 2013, President Karzai endorsed its recommendations and issued Presidential Decree No. 129. This decree ordered the NDS, the Attorney General's Office, the Ministry of Interior Affairs, the Ministry of Justice and the Supreme Court to investigate allegations of torture, prosecute alleged perpetrators, release detainees and prisoners in arbitrary detention, and increase access of defence lawyers and medical personnel to detainees to prevent torture and arbitrary detention and ensure accountability.

35. During 2013, UNAMA/OHCHR engaged with government officials from relevant institutions and ministries, troop contributing nations, international donors, defence lawyers, human rights organizations and civil society to advocate and track implementation of the Presidential Decree. Visits to detention facilities continued with UNAMA/OHCHR assessing both the implementation and effectiveness of the Presidential orders and providing technical assistance when requested. UNAMA/OHCHR findings to date have indicated that torture and ill-treatment of conflict-related detainees persists in some detention facilities and that ANP and NDS personnel continue to use torture to obtain confessions. Presidential Decree No. 129 alone is not an effective deterrent to torture; greater accountability is needed.

36. However, some progress has been made, with basic accountability measures taken in several cases: there were torture-related arrests of Afghan Local Police officers in Kunduz in May 2013, but no prosecutions yet in this case; the AIHRC made a complaint of torture against a prominent ANP Commander in Kandahar to the NDS prosecutor which resulted in the Commander receiving a warning letter from the NDS and the police regarding his conduct; an ANP officer in Herat province received a similar reprimand. UNAMA/OHCHR also received reports that two NDS officials, who were arrested in Uruzgan province in June 2013 for allegedly torturing detainees, have been transferred to a Kandahar military court to await trial. These cases could set a precedent for addressing torture in the future.

37. Access to detention facilities has improved; in April 2013, the Director of the NDS ordered its detention facility directors to provide full access to human rights organizations and facilitate unannounced visits. Some provincial directors have established internal complaints mechanisms to investigate allegations of torture and internal monitoring mechanisms. While these complaints procedures are an improvement, they are internal measures that lack independence and transparency.

38. Defence lawyers have access to provincial NDS detention facilities, but can usually access detainees only after the investigation phase has been concluded. The Legal Aid Department of the Ministry of Justice lacks capacity and alone cannot address the current shortfall of legal aid defence lawyers. The Ministry of Public Health has made some progress to ensure that medical personnel working in detention facilities across Afghanistan are aware of Presidential Decree No. 129. Most medical personnel, however, lack independence as they report directly to the NDS and the Ministry of Interior Affairs and fear that they will face reprisals if they endorse findings of physical abuse or torture.

39. The Supreme Court has taken action to implement Presidential Decree No. 129, including issuing instructions to judges reminding them to reject confessions obtained through torture and to dismiss cases that rely solely on evidence thus obtained. Additionally, the Supreme Court, the Attorney-General's Office and the Ministry of Justice conducted joint visits to several provincial prisons to review cases of individuals who had been held in arbitrary detention. As a result, more than 400 detainees were released, although very few had been held for conflict-related offences.

40. In response to the findings of the UNAMA/OHCHR report of 20 January 2013, the International Security Assistance Force suspended transfers of detainees it captured to 35 Afghan detention facilities and redesigned its detainee certification review process to include inspections, extended training and capacity-building of all ANP and NDS interrogators and detention staff on human rights principles and non-coercive interrogation techniques, and mentoring. On 5 May 2013, ISAF certified or permitted transfer of detainees to NDS departments 124 and 40 in Kabul, but shortly after suspended this certification decision, which has yet to be lifted. ISAF certified six Afghan-run detention facilities, NDS provincial headquarters in Kunar, Nangarhar, Khost and Helmand, the Helmand provincial prison and the Afghan National Detention Facility in Parwan (ANDF Parwan). These certifications are reviewed every three months.

41. UNAMA/OHCHR has conducted three visits to ANDF Parwan since it was handed over to the Government of Afghanistan. Approximately 2,330 detainees have been released since the handover, following case reviews by the Government. However, 2,440 Afghan detainees (including 70 children) remain in custody in the detention facility. In addition, 70 detainees remain under the control of the United States Government at this location. Approximately 1,879 of the 2,440 detainees are still awaiting their initial court hearing and many have been detained for periods longer than that prescribed by Afghan law, and are arbitrarily detained. UNAMA/OHCHR also found that many detainees' due process rights had not been guaranteed, including the right to be informed of the reason for arrest and the right to defence counsel.

IV. Violence against women

42. Across Afghanistan, harmful practices and incidents of violence against women remain pervasive. On 8 December, UNAMA/OHCHR released a report entitled A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, documenting mixed results in the implementation of the 2009 Law on the Elimination of Violence against Women (EVAW law). The report was based on consultations with 203 judicial, police and government officials, and monitoring of nearly 500 cases of violence against women from 18 of 34 provinces throughout Afghanistan between October 2012 and September 2013.

43. The UNAMA/OHCHR report noted that authorities registered 28 per cent more reported incidents of violence against women under the EVAW law, but the overall use of the law by prosecutors and courts as a basis for filing indictments and obtaining convictions remained low, with more cases mediated than entering the judicial process. In 16 of the 18 provinces where detailed information on the application of the EVAW law was available, police and prosecutors registered 650 incidents of violence against women. This represents an increase in the number of incidents registered by police and prosecutors compared with UNAMA's findings in December 2012. Of those 650 incidents, prosecutors used the EVAW law in 109 (17 per cent) and the courts applied the law in 60 cases, reflecting decreases from the previous period. UNAMA/OHCHR notes with concern that, despite the rise in reported incidents, the overall number of criminal indictments filed by prosecutors in cases of violence against women under all applicable laws decreased in 2013.

44. UNAMA/OHCHR note that police and prosecutors have been mediating more cases registered under the EVAW law or referring cases to informal dispute resolution. The EVAW law neither refers to mediation nor rules it out, but permits a woman to withdraw her complaint at any point, which in practice facilitates mediation and is often culturally emphasized. UNAMA/OHCHR found that mediation, whether through informal or formal processes, often did not enforce penal sanctions for perpetrators under the EVAW law and/or the Afghan Penal Code. Through field monitoring, UNAMA observed that mediation of cases of violence against women by police in practical terms meant persuading a woman to resolve her case outside the judicial system. Decisions by informal mechanisms were often observed to be shaped by powerful men in local areas applying different procedures and making decisions based on a mix of tradition, varying interpretations of Islamic law and local power relations, sometimes contrary to law or religious principles. As a result, women sometimes faced further victimization.

45. Prosecutions of women and girls for leaving their homes without the permission of male relatives — often to escape violence — continued in spite of 2012 directives from the Attorney-General and the Supreme Court to end the practice. Although "running away" is not a crime under Afghan law or sharia law, police and prosecutors often arrest and prosecute women and girls for this "moral crime" and based on their discretion, charge them with "intention" to commit *zina* (premarital or extramarital sexual intercourse). Under sharia law, *zina* is a crime irrespective of a woman's marital status or age, but "attempt to commit *zina*" is not a distinct codified crime in the Afghan Penal Code, nor is it proscribed under sharia law. UNAMA observed through field monitoring that authorities' determination of "intent" in such cases is highly subjective, usually based on circumstantial evidence and often centred on the views of a specific prosecutor or police officer. The Supreme Court recorded 71 convictions for "running away/attempted *zina*" between March 2012 and March 2013.

46. Over the course of 2013, several legislative developments occurred in the form of setbacks to the advancement of women's rights. The EVAW law was enacted by Presidential Decree in 2009 and on 18 May 2013, was brought before the Afghan Parliament by the Parliamentary Commission on Women's Affairs, Civil Society and Human Rights with the stated purpose of obtaining parliamentary endorsement. This resulted in heated debates as several parliamentarians stated that the law contradicted certain tenets of Islam. The law was sent for consultation by 18 parliamentary committees. The debate around the law was highly publicized in the media, which negatively impacted on the already weak implementation of the EVAW law. It also highlighted the fragile nature of gains made for women's rights in Afghanistan. Should the law come back to Parliament for a vote, many women's advocates are concerned that it will be considerably weakened or rejected altogether.

47. In June 2013, the lower house of Parliament, the Wolesi Jirga, passed a draft criminal procedure code which prohibits witnesses from testifying against their relatives in all criminal cases. This provision would make effective prosecution of EVAW law cases extremely difficult, as in most instances where violence takes place in the domestic sphere, family members are generally the only witnesses to the criminal acts. Support for the new provision focused on the need to keep family matters, such as violence against female relatives and child abuse, private matters to be addressed within the family or community. At the time of writing, the draft is pending before the upper house of Parliament, the Meshrano Jirga.

48. In August 2013, Parliament passed an election law which reduced the quota of seats for women in provincial councils from 25 to 20 per cent and eliminated the quota altogether in district councils. These amendments to the election law are concerning as parliamentarians tried to remove all quotas for women at the local level and only reinserted

the lower 20 per cent quota for provincial councils after intense advocacy by women's rights groups. During its July 2013 session, the Committee on the Elimination of Discrimination against Women — commenting on the State report of Afghanistan under the Convention — expressed its concern regarding the election law, and the delegation made assurances that the women's parliamentary quota would be preserved given that it is constitutionally mandated.

V. Peace and reconciliation (including accountability and transitional justice)

49. On 18 September 2013, the Government of the Netherlands published a list of 5,000 victims who disappeared or were killed during the communist regime in Afghanistan between 1978 and 1979. The disclosure of this information, known as the "death lists", compiled by Afghan authorities at the time and revealed through a criminal proceeding in the Netherlands, mobilized victims' families, civil society and the President's Office on transitional justice. Following a meeting with former Jihadi commanders, the Office of the President issued a public statement recognizing the pain and suffering of concerned families and announced two days of national mourning on 30 September and 1 October to commemorate the victims of that period. The families of victims and civil society held memorials and public rallies calling on the Government and the international community to provide justice for past crimes and to ensure that atrocities do not reoccur, that perpetrators are punished and the needs of victims and survivors are addressed. General Abdul Rashid Dostum, a former militia commander who joined the current presidential ticket of Ashraf Ghani Ahmadzai as his vice-presidential candidate, issued a public apology to victims of years of conflict in Afghanistan without accepting any personal responsibility. This episode underscores the importance of the Government receiving and accepting the "conflict mapping report" prepared by the AIHRC and publicizing and acting on the report's findings and recommendations.

50. During 2013, UNAMA/OHCHR continued to support the Afghan People's Dialogue on Peace initiative. The project promotes a rights-based approach to peace and reconciliation efforts by enabling ordinary Afghans, including women, men, youth and minority groups, to express their views on prospects for peace, reconciliation, security, economic development, human rights, justice and the rule of law. The project has been implemented in two phases; Phase I from October to December 2011, and Phase II from June 2013 to mid-2014. By the end of 2013, approximately 6,500 Afghans had been consulted across the country. In line with the principle of Afghan leadership and ownership of peace-building initiatives, UNAMA/OHCHR has played a facilitation role, supporting civil society to lead in promoting this inclusive, rights-centred process that enables the voices of ordinary Afghans to be heard and considered by all policymakers.

51. Phase II of the People's Dialogue anticipates developing local road maps for peace by holding around 200 focus group discussions with community and religious leaders, women, youth representatives, former armed opposition and beneficiaries of development projects. The consultation process is expected to result in the production of 34 local road maps for peace — one for each province. Reports from focus groups so far indicate that Afghans are concerned about entrenched impunity, pervasive corruption and abuse of authority. Participants identified these factors as the main reasons for the insurgency's strength, which weakened the legitimate authority of government institutions, the rule of law and the protection of human rights.

VI. Support to national institutions

Afghanistan Independent Human Rights Commission

52. On 16 June 2013, President Karzai appointed five new AIHRC Commissioners and reappointed four serving Commissioners, including the Chair, Sima Samar. These (re)-appointments were made 18 months after the terms of office of the previous Commissioners had expired, in December 2011. Civil society, donors and UNAMA raised serious concerns that the selection process for the Commissioners failed to meet the international standards enshrined in the Paris Principles. I raised similar issues publicly at the end of June, stressing the need for a transparent, participatory and consultative process involving civil society to select qualified and independent human rights commissioners. None of the five new Commissioners appointed were drawn from the list of 60 potential candidates that civil society groups had provided to the President. These groups and UNAMA/OHCHR have also expressed concerns over the eligibility, political independence and human rights experience and commitment of several newly-appointed Commissioners, as required under law.

53. During my visit to Afghanistan in September 2013, I expressed concern at the non-consultative process leading to these appointments and the potential impact of this on the Commission's "A" status, given its five-year accreditation review in November 2013 by the International Coordinating Committee of National Human Rights Institutions (ICC). I encouraged the Government to address the deficiencies in the selection and appointment process, and to further strengthen the independence and effectiveness of the AIHRC.

54. On 18 November 2013, the Commission underwent its accreditation review with the ICC Sub-Committee on Accreditation, which recommended a deferral of the decision on accreditation for one year. In its decision, the recommendation to defer was accompanied by a statement of concerns regarding the selection and appointment process for Commissioners, the dependence of the AIHRC on international donor funding and the disparity in the ratio of female to male staff members among Commission staff. The Sub-Committee warned that these concerns needed to be addressed before the Commission's next review, failing which the Committee would recommend a downgrade of the AIHRC to "B" status. Final certification by the ICC Bureau of the Sub-Committee recommendation to defer was pending at the time of writing.

VII. Cooperation with United Nations human rights mechanisms

55. Afghanistan presented its combined initial and second periodic reports to the Committee on the Elimination of Discrimination against Women in July 2013. The Committee expressed satisfaction with the progress made in women's rights protection in Afghanistan since 2001, including the EVAW law, the National Action Plan for the Women of Afghanistan (2008–2018) and efforts to increase women's participation in political and public life. The Committee also raised several issues of concern, including proposed amendments to the EVAW law and the appointment of the new members of the AIHRC, given that one Commissioner was known to have spoken publicly against women's rights. The Committee recommended that women should be more involved in the peace process to ensure its success, and inquired about the Family Code, which is currently being revised.

56. The Committee noted the significant efforts made during the last decade to enact and implement a legal framework protecting and promoting women's rights. However, it considered that the climate of persistent and extreme violence, in particular against women,

the ongoing political process and the transition of security responsibilities placed the State in a challenging position. It considered implementation of the Convention as the most effective safeguard to ensure the full respect and enjoyment of women's rights. The Committee provided recommendations on the elimination of violence against women and harmful practices and other measures as a high priority for national mobilization and international support.

57. In November 2013, the Government submitted its second report to the universal periodic review mechanism of the United Nations Human Rights Council. This report addressed the Government's progress in implementing the 117 recommendations made by the Council following the first review of the human rights situation in Afghanistan in 2009. In the second half of 2013, the Ministry of Foreign Affairs began a robust process to prepare the initial report of Afghanistan to the Committee against Torture, which is due in June 2014. Given the serious concerns raised about torture, it is greatly appreciated that Afghanistan is paying particular attention to the preparation of this report.

VIII. Conclusion

58. The human rights agenda in Afghanistan is at a critical crossroads. In April 2014, President Karzai's two terms in office will expire and presidential elections will be held. Over the next year, international military forces will finalize their handover of security responsibilities to Afghan forces. At the same time, a large portion of the international donor presence is expected to withdraw from Afghanistan, significantly reducing financial commitments and direct engagement in project implementation.

59. As political, security and economic transition accelerate to their conclusion and with the persistence of the armed conflict, many Afghans are concerned that instability may increase throughout the country, undoing the significant human rights gains of the last 12 years. There are already signs that the Government and the international community's commitment and attention to the human rights agenda are weakening and that the overall situation of human rights is deteriorating. Indicators include the recent flawed appointment process to the AIHRC, rising civilian casualties in the armed conflict, and developments that could weaken women's rights. The Government should ensure that the transition in 2014 does not lead to a rollback of the gains made and that human rights are not sacrificed for the sake of political expediency.

IX. Recommendations

60. **The United Nations High Commissioner for Human Rights recommends the following:**

The Government of Afghanistan should:

(a) Prioritize efforts to strengthen civilian protection, especially full implementation of the Government counter-IED strategy, and ensure development and resourcing of sufficient ANSF capacity to command, control and effectively conduct counter-IED operations and IED disposal, including exploitation;

(b) Strengthen structures in the Government that track, mitigate and provide accountability for civilian casualties by pro-Government forces, including transparent and timely investigations and accurate tracking of all incidents of civilian casualties caused by ANSF, in order to improve civilian protection, compensation and accountability;

(c) Strengthen the national and provincial commissions on EVAW to enable them to coordinate all efforts to address violence against women and fulfil their legally prescribed role mandated under the EVAW law, including through oversight and political support by the highest level of the Government. Issue clear instructions to all government bodies to collaborate and share information with the commissions;

(d) Fully implement the Attorney General's 2012 directive No. 92/202 requiring prosecutors to ensure that women are not prosecuted for leaving their houses, and review any new cases of women who are imprisoned for "running away" and/or "attempted zina" by a joint delegation comprising the Attorney General's Office, the Supreme Court and the Ministry of Interior Affairs, with a timeline for completion and follow-up action including release of women and girls who have been wrongly imprisoned;

(e) Develop and implement detailed instructions for police and prosecutors outlining the methodology, criteria, minimum requirements and follow-up mechanisms regulating mediation of registered incidents of violence against women. The instructions should specify responsibilities after mediation settlements to be carried out periodically for a minimum of six months with mandatory follow-up reports;

(f) Put in place within six months a concrete plan covering the next two-year period to improve implementation of the EVAW law, including the measures recommended to Afghanistan by the Committee on the Elimination of Discrimination against Women in July 2013;

(g) Build the capacity of government institutions working on implementation of the EVAW law to ensure a common understanding of violence against women and the provisions of the EVAW law. Training on the EVAW law should be a mandatory element of the training curriculum of police and prosecutor's offices with progress on EVAW law implementation measured biannually against defined indicators and publicly reported;

(h) Consider creating an independent inspection mechanism that would help to identify problems in detention facility operating procedures and practices and work with the institutions to resolve these issues in the long-term;

(i) Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Afghanistan to assist in providing a comprehensive response to preventing ill-treatment in detention facilities.

(j) Fully implement Presidential Decree No. 129, particularly to ensure that perpetrators of torture are held accountable, including through proper independent investigation and oversight mechanisms, suspension from or loss of employment, and criminal prosecution. Courts and prosecutors must be diligent in throwing out evidence obtained through the use of torture and ill-treatment;

(k) Prevent any interference or political pressure designed to compromise the independence or effectiveness of the AIHRC, ensuring that any measures taken to ensure retention of the Commission's "A" status only strengthen its effectiveness and ensure its independence. The selection and appointment process for Commissioners should be reformed in order to strengthen the effectiveness and independence of the Commission, and sustainable public funding of the Commission's operational budget should be provided;

(l) Fully support the public release of the Commission's conflict-mapping report as a way of promoting peace and reconciliation.

61. **Anti-Government elements should:**

(a) Cease the deliberate targeting and killing of civilians and withdraw orders that authorize attacks on and killing of civilians, particularly religious personnel, judicial authorities and civilian government workers;

(b) Cease using victim-activated IEDs and halt the indiscriminate use of IEDs, particularly in all areas frequented by civilians;

(c) Cease practices carried out by parallel judicial structures that impose unlawful punishments such as killing, amputation, mutilation and beatings.

62. **The international community should:**

(a) Consider increasing support to the Government in implementing the EVAW law by channelling development assistance towards commitments made under the Tokyo Declaration on gender equality, women's empowerment and EVAW law implementation, and toward the recommendations the Committee on the Elimination of Discrimination against Women made to Afghanistan in July 2013;

(b) Implement a joint monitoring framework that includes specific indicators to measure progress and incentives for sustained and increased financial support based on demonstrated measurable results by the Government in EVAW law enforcement and related measures to end violence against women and girls;

(c) Continue to support the AIHRC, which will struggle to survive without continuing donor support. A withdrawal of donor support at this critical juncture would result in a rolling back of human rights gains in the face of escalating violations across the country;

(d) Undertake countrywide verification of the 700 international military bases and firing ranges that have closed to ensure they are cleared of unexploded and abandoned ordnance;

(e) Establish a mechanism within ISAF and ANSF that communicates the suspected presence of unexploded ordnance from aerial and ground operations to appropriate authorities and ensure the marking and clearance of suspect hazardous areas;

(f) Put plans in place to continue engagement on detention issues post-2014, especially if international forces, including special forces, will be active in supporting any ANSF military or counter-insurgency operations. Detention oversight, remediation, training and other torture prevention measures should remain an essential aspect of any international support mandate or partnership with Afghan forces post-2014.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

Technical assistance for Libya in the field of human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, submitted pursuant to Human Rights Council resolution 22/19, reflects the human rights-related challenges and needs in Libya and the technical support and capacity-building activities conducted by the Office of the United Nations High Commissioner for Human Rights through the United Nations Support Mission in Libya to address such needs, in cooperation with the Government of Libya, civil society, United Nations specialized agencies, funds and programmes and international, regional and subregional organizations.

The report highlights the importance of supporting the ongoing efforts of the Government of Libya to build the capacity of institutions dealing with human rights, transitional justice and the rule of law. It provides recommendations to the Government on establishing a robust legal framework, strengthening national human rights bodies, ensuring effective administration of justice, developing comprehensive transitional justice processes and addressing the needs of social groups.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 22/19, adopted on 21 March 2013, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) "to prepare a written report, for submission to the Human Rights Council at its twenty-fifth session, reflecting human rights regarding the technical support and capacity-building needs of Libya, with a view to strengthening the promotion and protection of, and respect for, human rights and fundamental freedoms and exploring ways of cooperation to overcome the challenges in the areas of security, respect for the rule of law, transitional justice and human rights".

II. Background

2. Libya is undergoing a difficult transitional period, as it emerges from four decades of large-scale human rights violations and an intensive armed conflict in 2011 which overthrew the regime of Colonel Muammar Qadhafi, coupled with the collapse of security structures and State institutions. Security has continued to be a predominant concern against a backdrop of substantial political and criminal violence. The armed brigades which emerged during the conflict have increased in size since the end of the conflict in 2011 and exert considerable political and military power. The majority of the brigades are nominally affiliated to the Government but operate with effective autonomy. Despite the efforts of the Government to establish stability and the rule of law, unrest continues with targeted assassinations of State officials, particularly in Benghazi, and further incidents of violence in Tripoli and other parts of the country, reflecting an ongoing power struggle among the brigades and illustrating the major difficulties the Government faces in asserting its control and authority over the whole country.

3. On 25 February 2011, the Human Rights Council adopted resolution S-15/1, in which it decided to dispatch urgently an independent, international commission of inquiry to Libya to investigate all alleged violations of international human rights law. The International Commission of Inquiry presented its first report to the Council on 1 June 2011[1] and its final report on 8 March 2012.[2] In its resolution 22/19, the Human Rights Council took note of the final report and encouraged the Government of Libya to implement fully the recommendations contained therein.

4. On 16 September 2011, in resolution 2009 (2011) the Security Council established the United Nations Support Mission in Libya (UNSMIL). On 14 March 2013, the Security Council adopted resolution 2095 (2013), in which it decided that the mandate of UNSMIL, in full accordance with the principles of national ownership, should be to support Libyan efforts in a number of areas, including to "promote the rule of law and monitor and protect human rights, in accordance with Libya's international legal obligations, particularly those of women and people belonging to vulnerable groups, such as children, minorities and migrants, including through assisting the Libyan Government to ensure the humane treatment of and due process for detainees and to reform and build transparent and accountable justice and correctional systems, supporting the development and implementation of a comprehensive transitional justice strategy, and providing assistance towards national reconciliation as well as support to ensure the continued identification, separation and reintegration of children affected by armed conflict". In fulfilment of the

[1] A/HRC/17/44.

[2] A/HRC/19/68, advance unedited version only.

human rights mandate of UNSMIL, its Human Rights, Transitional Justice and Rule of Law Division was established from the outset. The Director of the Division represents the United Nations High Commissioner for Human Rights in Libya.

5. In February 2013, an international ministerial meeting on support to Libya in the areas of security, justice and rule of law was convened in Paris. The meeting was preceded by a senior officials meeting held in London in December 2012. During the meeting in Paris, the Government of Libya presented its priorities for the development and reform of the security, rule of law and justice sectors. The participants issued a communiqué and adopted the National Security Development Plan and the Justice and Rule of Law Development Plan, to be implemented by the Government of Libya with the assistance of the international community. The meeting welcomed the coordination role and the technical support provided by UNSMIL.

6. In early 2014, the country is expected to elect a 60-member Constitution Drafting Assembly. The new constitution, drafted by the Assembly, is due to be adopted by a referendum, which is to be followed by general elections in the same year.

7. Despite positive developments, such as the establishment of a national human rights institution, the National Council for Civil Liberties and Human Rights, and the establishment of a Human Rights Committee within the General National Congress, the criminal justice system is not yet fully functional and the security sector requires major reform.

8. Libya is a party to the core international human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Child and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. It has also ratified the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict. Libya is also a party to the African Charter on Human and Peoples' Rights, but has not yet ratified, inter alia, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, or the 1951 Convention relating to the Status of Refugees and its Optional Protocol. In 2013, Libya ratified the Convention on the Rights of Persons with Disabilities, although it has not yet deposited the instrument of ratification.

9. Libya will undergo its second review by the Working Group on the Universal Periodic Review in 2015. Under the Qadhafi regime, special procedures of the Human Rights Council were denied access to the country. Since the transition, visits by the Working Group on Enforced or Involuntary Disappearances and the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination were planned for May 2013 but had to be postponed for security reasons. The Human Rights, Transitional Justice and Rule of Law Division of UNSMIL has provided technical advice to the human rights section of the Ministry of Foreign Affairs on engagement with, and reporting to, the human rights treaty bodies, the universal periodic review and the special procedures of the Human Rights Council. The High Commissioner has been invited by the Government to conduct an official visit to Libya.

III. Human rights priorities and technical support

A. Groups in focus

1. Women

10. Women in Libya are facing challenges in ensuring their fair participation in public, constitutional, and transitional justice processes. Six seats out of 60 have been assigned to women in the Constitution Drafting Assembly, which is due to be elected in 2014 and women may stand for election for the remainder of the seats. The capacity of national institutions and civil society to contribute to the protection of women's rights is limited.

11. In May 2013, the Minister of Justice submitted a draft law on the care of women victims of rape and violence to the General National Congress, as current legislation does not ensure adequate protection in this regard. It foresees the provision of reparations, including compensation, health care, psychosocial support and shelter. It also provides for legal aid to enable victims to bring the perpetrators of crimes to court. The law would also apply to male victims.

12. In association with the Women's Empowerment Section of UNSMIL, the Human Rights, Transitional Justice and Rule of Law Division has provided advice to the General National Congress and the Ministry of Justice on the above-mentioned draft legislation and on the promotion and protection of the rights of women in other draft legislation. The Division has also developed awareness-raising initiatives to support efforts to ensure, inter alia, women's right to equal access to justice, in which a number of civil society actors and other stakeholders actively participated.

2. Amazigh, Tabu and Tuareg communities

13. In the context of ensuring inclusion and attention to all segments of Libyan society, the rights of the Amazigh, Tabu and Tuareg communities have been prominent in the political debate and reform initiatives since the conflict. According to the Ministry of Foreign Affairs and International Cooperation, the three communities represent less than 4 per cent of the population, although estimates provided by these communities are higher. Many among these communities also consider themselves indigenous peoples. In July 2013, the General National Congress adopted Law 18 in response to concerns raised by these communities. Law 18 recognizes the languages of the three communities as "linguistic and cultural components of Libyan society" and requires the State to support, promote and protect their cultural and linguistic heritage. In addition, the electoral law for the 60-member Constitution Drafting Assembly was adopted by the Congress in July 2013 and provided for equal representation from the three historical regions of Libya; namely Tripolitania, Fezzan and Cyrenaica. Two seats were reserved for each of the Amazigh, Tabu and Tuareg communities However, at the time of writing, groups from these communities objected to the law on the grounds that it did not offer sufficient guarantees to protect their rights.

14. Staff ofthe Human Rights, Transitional Justice and Rule of Law Division have been meeting regularly with representatives of the Amazigh Supreme Council, the National Tabu Gathering and the Tuareg Supreme Council, in addition to non-governmental organizations (NGOs), human rights defenders and representatives of the General National Congress. The Division has also advocated for the formation of an inclusive Constitution Drafting Assembly, reflecting the fair participation of all communities, and provided advice and training on international human rights law to ensure it is applied to all communities without discrimination.

3. Children

15. Hundreds of children were directly or indirectly exposed to violence, and some directly involved, in the conflict in 2011. Limited efforts have been made thus far to respond to significant psychosocial needs. While UNSMIL has not received credible reports of the recent participation of children in armed brigades, it has documented a number of other grave violations committed against children, including the killing of children during political and other violence and also violations related to the detention of national or migrant minors with adults without due process.

16. The Human Rights, Transitional Justice and Rule of Law Division works closely with the United Nations Children's Fund (UNICEF) in monitoring violations of the rights of children. It contributes to the annual report of the Secretary-General on Children and Armed Conflict[3] and reports relevant violations to the Security Council by way of the global horizontal note coordinated by the Special Representative of the Secretary-General for Children and Armed Conflict.[4] The Division has provided advice on the formulation of model constitutional articles related to the protection of children for submission to the Constitution Drafting Assembly. The Division and UNICEF have also closely cooperated on initiatives seeking to further build the capacity of Libyan NGOs working on child protection issues and have supported Government initiatives related to child protection. In addition, UNSMIL, with UNICEF and the Office of the United Nations High Commissioner for Refugees (UNHCR), convened a United Nations-Government task force to improve coordination in addressing, inter alia, the protection of children, especially those affected by conflict.

4. Internally displaced persons

17. As a result of the conflict in 2011, almost 60,000 persons from a number of groups, such as the Tawergha, Mashashiya and Gualish, the Jaramla in Dirj, the S'ian in Zigzaw, the Tabu in al-Kufra and the Tuareg in Ghadames, remain internally displaced.[5] The inhabitants of the town of Tawergha are the largest group, totalling about 30,000.[6] They were forcibly displaced from their town in August 2011 by armed brigades from Misrata, following allegations of grave human rights abuses committed in Misrata by pro-Qadhafi forces from Tawergha. Members of armed brigades from Misrata have carried out raids against camps for internally displaced persons from Tawergha, resulting in unlawful killings and arbitrary arrests. The local council of Tawergha decided not to proceed with a unilateral return to the town originally scheduled for June 2013, following a commitment by the Government to develop a plan for their return and to improve their living conditions in the meantime. An overall strategy to ensure the return of the Tawergha communities and all other displaced communities to their homes is not yet in place.

18. UNSMIL has provided capacity support to the Office of the Prime Minister on issues related to internally displaced persons, including humanitarian relief to vulnerable groups. The Human Rights, Transitional Justice and Rule of Law Division has advocated for an overall strategy to ensure the return of the displaced in dignity and safety, which

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[3] See, for example, A/67/845–S/2013/245, paras. 80–85.

[4] The mandate of the Special Representative addresses six grave violations, specifically the killing or maiming of children, the recruitment or use of children as soldiers, sexual violence against children, attacks against schools and hospitals, denial of humanitarian access for children and abduction of children. For more information see http://childrenandarmedconflict.un.org/publications/WorkingPaper-1_SixGraveViolationsLegalFoundation.pdf.

[5] See UNHCR Libya fact sheet available from http://www.unhcr.org/4c907ffe9.html.

[6] Ibid.

would include transitional justice measures addressing, inter alia, the need to establish the facts on the events relating to Misrata and Tawergha as a necessary step towards the resolution of the dispute between the two communities. The Division has also provided advice for a proposed national conference on internal displacement in Libya organized by the Government, which has not yet taken place. The Division will provide further support to the Government in addressing the situation in accordance with the Guiding Principles on Internal Displacement.

5. Migrants, refugees and asylum seekers

19. The situation of migrants remains a major concern. According to the Ministry of the Interior, as of November 2013 there were 4,775 persons held under Law 19 of 2010 in detention centres throughout Libya, including in Ajdabiya, Brak al-Shati', al-Hamra (Gheryan), al-Khoms, Sabratha and Surman. Law 19 of 2010 states that "[t]he foreigner, who is an illegal migrant, is punished by imprisonment with labour or a penalty not exceeding 1,000 [Libyan] dinars. In all cases, the foreigner convicted of one of the crimes enumerated in this law shall be deported ... once the punishment is completed." Conditions in the detention centres are extremely poor, with chronic overcrowding, reports of ill-treatment and forced labour and a lack of basic sanitary and hygiene standards. Moreover, the Libyan authorities have not established a screening mechanism to guarantee the protection of vulnerable individuals, such as children, and limited efforts have been made to address the situation. The Libyan authorities have noted that further resources are required, as well as further international and regional cooperation.

20. UNSMIL is working closely with UNHCR, the International Organization for Migration and other international agencies in advocating for the rights of migrants, refugees and asylum seekers and participating in joint monitoring visits to the detention centres. UNSMIL has also worked closely with the United Nations Office on Drugs and Crime (UNODC) in providing training for police officers which covered, inter alia, the protection of the rights of smuggled migrants and the importance of not conflating migration issues with the fight against the trafficking of persons and transnational criminal networks. The Human Rights, Transitional Justice and Rule of Law Division will continue to follow the situation and provide advice to the authorities on addressing issues relating to the promotion and protection of the rights of migrants, refugees and asylum seekers.

B. Administration of justice

1. Detention related to the 2011 conflict

21. The situation of conflict-related detainees remains a critical concern in urgent need of resolution. According to the Ministry of Justice, as of the end of December 2013, fewer than 7,000 such detainees were held across the country, mostly by armed brigades, without any proper judicial process. Since 2012, the Government has sought to bring armed brigades involved in detentions under the official authority of the State by affiliating them to specific ministries, even though in many cases the armed brigades have retained actual control of the detention centres.

22. On 1 October 2013, OHCHR and UNSMIL issued a joint report describing the treatment of detainees in Libya.[7] The reports sets out how prolonged detention and interrogation at the hands of armed brigades without experience or training in the handling of detainees, as well as the lack of effective judicial oversight or accountability, has created

[7] Available from http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf.

an environment conducive to torture or other ill-treatment. In contrast, when detention facilities have been handed over to trained officers of the Judicial Police (the prison service of Libya), there have been marked improvements in the condition and treatment of detainees. The report found that torture is widespread and most frequent immediately after arrest and during the first days of interrogation to extract confessions and other information. Detainees are usually held without access to lawyers and with only occasional, if any, access to families. The report recorded 27 cases of death in custody since 2011, of which 11 took place in 2013, for which significant information suggests that torture was the cause of death. The report also noted the measures taken by the Libyan authorities to address arbitrary detentions and torture, such as the adoption of a law in April 2013, criminalizing torture, enforced disappearances and discrimination, which provided for terms of imprisonment ranging from five years to life depending on the harm caused.

23. The Human Rights, Transitional Justice and Rule of Law Division has paid particular attention to the situation of female detainees and knew of approximately 80 female inmates held in five prisons or detention facilities as of November 2013. The majority were detained without due process in connection with the conflict. Female detainees have raised a number of concerns relating to the lack of female guards, the access of male guards to their cells and the lack of specialized health care. Several female detainees stated that they had been sexually harassed during detention in their cells or during interrogation.

24. The screening process and the investigation of conflict-related detainees have been a major challenge for the public prosecution. Despite progress made in this regard in Misrata and Zawiya, thousands of detainees are still awaiting judicial process. The recently promulgated Law on Transitional Justice provides for a deadline of 90 days from its promulgation to complete the screening process, whereby detainees would be either charged or released. However, given the lack of State control of the majority of detention facilities, in conjunction with security issues and capacity constraints, the judicial system faces a significant challenge in successfully meeting such a deadline.

25. In August 2013, a new State prison, the al-Jawwiyah Institution for Correction and Rehabilitation, was inaugurated in Misrata. Conditions at the prison are a marked improvement on many other detention facilities in Libya. The opening of the prison is an important step forward in enabling the handover of detainees to a prison under full control of the authorities.

26. During the course of 2013, staff of the Human Rights, Transitional Justice and Rule of Law Division visited over 30 detention centres, mostly in western Libya, where the largest concentration of detainees is found. Through this monitoring work, the Division notified the Libyan authorities of relevant issues and specific cases requiring attention. It also made a number of recommendations, which led to interventions by the Ministry of Justice and an improvement of the human rights situation in specific detention centres. For example the situation in the Majer Correction and Rehabilitation Institution in Zlitan was considerably improved following such an intervention in July 2013.

2. The judiciary

27. Under the Qadhafi regime, a parallel judicial system was used as a tool of political repression, most often through the State security courts, where the rights of the accused were routinely violated, even in instances where these rights were guaranteed in Libyan law. In addition, judges, prosecutors, State lawyers and members of the legal department in the Government constituted one single corps and the practice of appointing judges to other non-judicial legal positions within the corps was often used by the regime to punish or intimidate judges known for their integrity and independence. This practice was in violation of the principle of independence and irremovability of judges. Accordingly, the Human

Rights, Transitional Justice and Rule of Law Division has called for the independence and competence of the judiciary to be strengthened through reform of the composition of the Supreme Judicial Council and enhanced integrity and accountability, as laid out in the Bangalore Principles of Judicial Conduct.

28. After the revolution, the Supreme Judicial Council abolished the State security courts and the Constitutional Declaration issued by the National Transitional Council in 2011 forbade the establishment of special courts and provided for the right of appeal for administrative decisions. The Government has also carried out a number of important initiatives to reform the judiciary and enhance its independence. In May 2013, the General National Congress amended the law on the status of the judiciary to allow for the election by peers of 11 out of 13 members of the Supreme Judicial Council. The law also provides for the Prosecutor General and the head of the Judicial Inspection to be ex officio members of the Supreme Judicial Council. In June 2013, the Supreme Judicial Council elected its President and is now considering proposals to further advance judicial reform.

29. In a further welcome step, the Congress adopted a law abolishing the jurisdiction of military courts over civilians in April 2013. In addition, a law establishing a specialized administrative justice order and a constitutional court is being prepared. This reform aims to increase the ability of citizens to challenge administrative decisions and laws.

30. Ensuring a safe environment for judges and prosecutors is a fundamental necessity for the effective administration of justice. The security apparatus of the Government and the Judicial Police in particular does not yet have sufficient capacity, training or equipment to ensure the security of judicial officials. Prosecutors and judges are frequently subjected to intimidation and assaults. Prosecutors ordering the release of former regime members or the arrest of members of armed brigades are the primary target of such attacks and threats. On 6 December 2012, the Prosecutor General was assaulted by members of an armed brigade in his office for having issued an arrest warrant against one of its members. In 2013, a number of senior judges were assassinated. The most senior judge and prosecutor of the Green Mountain region were both assassinated in Derna in 2013. The bombing of the North Benghazi Court in August 2013, which followed several similar bombings in Derna and Sirt, further highlighted the vulnerability of the judiciary. In addition, armed brigades besieged the Ministry of Justice on two separate occasions in 2013. In response, judges organized a series of strikes to protest against the lack of security. This lack of security has impeded the effective investigation of human rights abuses, such as widespread torture in detention and other grave incidents, including the series of assassinations continuing in Benghazi and the violence against peaceful protesters which took place on 15 November 2013 in Tripoli.

31. The Human Rights, Transitional Justice and Rule of Law Division has been working closely with the High Judicial Institute, which leads on the training of judges and prosecutors. The Institute had already worked with the United Nations Development Programme (UNDP) and UNODC on updating the training curricula before the revolution and has since intensified its programme with the assistance of the Division. In association with the institute and in cooperation with the Ministry of Justice, the Division organized five training workshops for judges and prosecutors in 2012 and 2013 on the screening of detainees, the preparation of prosecutorial strategies, the investigation of conflict-related and post-conflict crimes and the application of international human rights and rule of law standards. Each workshop was attended by between 25 and 30 judges and prosecutors from different regions of Libya. The Division raised awareness of international human rights instruments and facilitated the sharing of comparative experiences, contributing to enhancing the capacity of Libyan judges and prosecutors.

32. The Division has also worked closely with the Office of Human Rights and Humanitarian Law of the Ministry of Defence by providing advice and organizing two

workshops in April and September 2013 on the reform of the military justice system, with a view to harmonizing governing principles with international human rights and rule of law standards and identifying capacity-building needs.

33. In addition, it has participated in a number of seminars organized by the Libyan Bar Association, the Libyan Judges Association and the Libyan Lawyers Association through delivering presentations and distributing awareness-raising booklets on human rights issues. The seminars discussed international best practices on, and comparative experiences of, enhancing access to justice for citizens.

34. In advance of the national elections in 2012, the Division organized four workshops in April and May 2012 involving over 100 judges assigned to settle election disputes. Over 40 such disputes were adjudicated in a manner generally considered to be in line with international standards.

3. The Judicial Police

35. Operating under the authority of the Ministry of Justice, the Judicial Police have broad responsibilities, including managing prisons, enforcing court decisions, securing courts and apprehending fugitives. The Government is in the process of integrating 10,000 members of the armed brigades into the ranks of the Judicial Police but significant obstacles remain, including the lack of a robust vetting process and an ongoing need to streamline the decision-making process within the department.

36. Recurrent cases of prison riots and escapes have underlined existing capacity gaps and a shortage of equipment. Break-outs took place from Sabha prison in March, April, June and November 2013, resulting in the escape of approximately 200 prisoners. In July 2013, armed men attacked al-Kweifiya prison in Benghazi. According to the Ministry of Justice, 1,169 prisoners escaped, including approximately 500 prisoners charged with murder and other serious crimes. However, the authorities succeeded in capturing a number of the escapees.

37. The leadership of the Judicial Police is keen to establish a professional corrections service with specialized officers, including in the areas of registry and data management, physical and mental health care and vocational training. To achieve this, a plan has been formulated to provide training to all officers upon recruitment and throughout their careers, through an independent Libyan training institute based in Tripoli and Gernadah, al-Baida.

38. The Human Rights, Transitional Justice and Rule of Law Division has provided advice and training to the Judicial Police on its structure, management and operational standards and meets regularly with its senior management to follow up on continuing technical support. Since October 2012, the Division has been working closely with the planning department of the Judicial Police on the preparation of a comprehensive prison reform strategy. In December 2012, it organized a high-level seminar which brought together the Ministries of Justice, Interior and Health, as well as the Judicial Police and the Prosecutor General, to discuss interministerial support for prison reform. In December 2013 in Tripoli, the Division, jointly with the Judicial Police, organized a meeting of all prison directors in Libya, providing them with an opportunity to share information and discuss with each other ways to overcome existing challenges. The meeting adopted recommendations aimed at strengthening the Judicial Police and harmonizing management approaches in Libyan prisons.

39. In June 2013, the Division submitted a proposal for the organizational restructuring of the Judicial Police after close consultation with relevant officials. During these consultations, the Division conducted assessments and capacity-building visits to several correction and rehabilitation institutions. In August 2013, it provided advice to the Ministry of Justice on its plan to develop a new security and operations unit for prisons and courts.

40. The Division is also working with the Judicial Police on reviewing internal regulations to ensure respect for international human rights standards and is providing technical assistance on enhancing prison security. Between January and April 2013, it delivered three training workshops for approximately 60 Judicial Police officers based in prisons in Tripoli and for 20 Judicial Police officers in a prison in al-Zawiya. It also visited the Gernadah training centre in February 2013 to deliver a number of "train the trainer" courses and provide advice on the organizational structure and training programme of the centre. This support significantly contributed to improving the knowledge of human rights standards of Judicial Police officers. In March 2013, the Division also proposed a draft training strategy for the Judicial Police.

C. Transitional justice

1. Law on Transitional Justice

41. On 2 December 2013, the General National Congress promulgated Law 29 of 2013 on Transitional Justice, repealing a previous law on transitional justice. The new law represents the most important development in this field in Libya thus far.

42. The Human Rights, Transitional Justice and Rule of Law Division provided advice to the Libyan authorities[8] and held expert workshops and events in several cities, including in Misrata, Benghazi and Sabha,[9] as part of its work to assist with the development of a comprehensive transitional justice strategy. It also provided extensive comments on the draft law, including comments which were incorporated into it, such as those relating to the establishment and functioning of a new truth commission and of a separate reparations body.

2. Truth-seeking

43. The Law on Transitional Justice provides for the establishment of the Fact-Finding and Reconciliation Commission, which will address human rights violations committed under the former regime and since its fall. The Commission succeeds its predecessor established under the previous law, which has remained largely inactive. The Commission is mandated to, inter alia, set out a complete picture of the nature, reason and scope of the human rights violations committed; address the situation of displaced persons, missing persons, and detainees; and decide upon reparations for victims. It will be headed by a board of nine members appointed by the General National Congress. It will operate for four years, with the possibility of a one-year extension, and will submit to the Congress a final report with recommendations.

44. In June 2013, the Congress ordered the establishment of a committee to investigate the killings in the Abu Salim prison in 1996. The proposed decree was revised and adopted as Law 31 of 2013 in December 2013. The Congress also passed a decree establishing a committee to identify the causes of a land conflict in the western mountains.

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[8] See for example, the report "Transitional justice – foundation for a new Libya", UNSMIL, 17 September 2012 (available from http://www.unsmil.unmissions.org/LinkClick.aspx?fileticket=8XrRUO-sXBs%3D&tabid=3543&language=en-US).

[9] See for example the recommendations of the conference on truth and reconciliation held in Tripoli on 12-13 Dec. 2012 (available from http://www.unsmil.unmissions.org/Default.aspx?tabid=5292&ctl=Details&mid=9097&ItemID=807652&language=en-US).

3. Reparations

45. The Law on Transitional Justice also establishes the Victims' Compensation Fund and provides for reparations, including compensation for material damage, memorialization, treatment and rehabilitation. Since the revolution, a number of reparations programmes have been established, such as the provision for compensation to former political prisoners under Law 50 of 2012. Under this law, all former political prisoners will be provided with 8,000 Libyan dinars for each month spent in prison between 1 September 1969 and 12 February 2011. Other forms of reparation which have been established by decree or law include the provision of pensions to the families of the missing and killed and compensation for the families of those killed in the Abu Salim prison. There are also legislative and other proposals for compensation and rehabilitation for victims of sexual and gender-based violence and further reparations for victims of the killings in the Abu Salim prison in 1996 and other groups of victims. Finally, a draft law to redress property grievances arising from the policies of the Qadhafi regime is under discussion.

46. Given the grave human rights abuses which took place over the previous four decades and the legacy of selective subsidies and compensation schemes put in place during the Qadhafi regime, crafting viable reparations programmes will be a challenging task for the authorities. In addition, the risk of inconsistent approaches to, or discrimination between, different categories of victims remains.

47. The Human Rights, Transitional Justice and Rule of Law Division has been working closely with the Ministry of Justice, the General National Congress, other Libyan authorities and victims' groups to ensure the adoption of a comprehensive approach to reparations. In this regard, the Division will pay particular attention to the situation of women, especially those who have suffered sexual violence, and minority groups.

4. Criminal justice

48. A number of trials of senior former regime officials are currently taking place against a backdrop of security issues affecting the safety of prosecutors and judges and courts which are not fully functioning. In May 2013, former Prime Minister al-Baghdadi al-Mahmoudi was charged with incitement to kill and corruption. Saif al-Islam Qadhafi is currently being tried in Zintan for national security offences relating to his alleged escape attempt during a visit by officials of the International Criminal Court in 2012. Two other former Qadhafi officials on trial in connection with the misuse of public funds relating to the Lockerbie compensation awards were acquitted in Tripoli in June. The former Minister of Education and Information and five other former regime officials were sentenced to death by the criminal court (*Cour d'Assises*) in Misrata in July 2013 for inciting violence and the killing of demonstrators. Concerns have been raised with respect to the conduct of the trials in compliance with international human rights standards, including in relation to access to defence counsel. There are no reports of death sentences being carried out since the revolution.

49. In October 2013, the Chamber of Accusation of the South Tripoli Court endorsed the indictment of 37 high-level figures of the former regime, including Saif al-Islam Qadhafi and former chief of intelligence Abdullah al-Senussi. They are charged with crimes relating to the 2011 conflict and their trial is expected to take place during 2014.

50. The Human Rights, Transitional Justice and Rule of Law Division has advised the Prosecutor General on the need to adopt a prosecutorial strategy for dealing with the crimes of former regime members as well as those committed during the conflict. In this regard, the Division has focused some of the above-mentioned workshops organized with the High Judicial Institute on the development of prosecutorial strategies and on raising awareness of international human rights and rule of law standards.

51. The Division will work further with Libyan judges to provide advice and capacity-building support to increase their understanding of the international human rights instruments ratified by Libya and their direct application in the national legal system. In addition UNSMIL intends to observe selected trials in order to provide advice and recommendations on further reforms and training required.

5. Processes of the International Criminal Court

52. On 26 February 2011, the Security Council adopted resolution 1970 (2011) in which it decided to refer the situation in Libya to the Prosecutor of the International Criminal Court and further decided that the Libyan authorities should cooperate fully and provide any necessary assistance to the Court and the Prosecutor. On 27 June 2011, the Court issued arrest warrants and requested the transfer of Abdullah al-Senussi and Saif al-Islam Qadhafi, as well as the late Muammar Qadhafi, to The Hague.[10] The Libyan authorities have challenged the admissibility of the cases.

53. In May 2013, the Pre-Trial Chamber of the Court rejected the admissibility challenge by Libya in the case of Saif al-Islam Qadhafi.[11] Libya subsequently appealed this decision. With regard to the admissibility challenge filed by Libya in the case of Abdullah al-Senussi, the Pre-Trial Chamber decided that the case was inadmissible before the court under Article 17(1) (a) of the Statute.[12] Abdullah al-Senussi's defence counsel has appealed against this decision.

6. Institutional reform

54. The approach of the Libyan authorities to vetting and institutional reform is an area of concern. There has been very limited vetting of new members of institutions, such as the armed forces, police, judiciary and Judicial Police. In contrast, strong exclusionary measures have been taken against those who served under the Qadhafi regime and they are not compliant with international human rights standards in a number of aspects.

55. One such measure is the Law on Political and Administrative Isolation which was adopted by the General National Congress in May 2013. The law, which is applicable for 10 years, lists a wide range of political, administrative and other positions, as well as types of affiliation and conduct, as a basis for excluding individuals from public life. While the law provides for certain due process guarantees, including the right to appeal to administrative courts and the Supreme Court, it contains criteria which are vague, far-reaching and disproportionate and therefore likely to violate the human rights of the individuals concerned. Exceptions to the law were considered but ultimately rejected. One example of the shortcomings of the law relates to Mohammad El-Magariaf who decided to resign as President of the Congress in anticipation of the application of the law to him. He had previously been the Libyan Ambassador to India – one of the positions affected by the law – before leaving the country and engaging in over three decades of active opposition to the Qadhafi regime.

56. A number of challenges to the constitutionality of the law were submitted to the Constitutional Chamber of the Supreme Court, including one by the National Council for Civil Liberties and Human Rights. The Supreme Judicial Council, charged with the

[10] See decision on the Prosecutor's application pursuant to Article 58 as to Muammar Mohammed Abu Miyan Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi, No. ICC-01/11, dated 27 June 2011, available from http://www.icc-cpi.int/iccdocs/doc/doc1101337.pdf.

[11] See http://www.icc-cpi.int/iccdocs/doc/doc1599307.pdf.

[12] See decision on the admissibility of the case against Abdullah Al-Senussi, No. ICC-01/11-10/11, dated 11 October 2013, p. 152, available at http://www.icc-cpi.int/iccdocs/doc/doc1663102.pdf.

application of the law to the judiciary, has proposed amendments to the law to mitigate its impact on the judiciary. Judges and prosecutors took strike action in June 2013, anticipating that the law would further undermine an already weak judiciary. It should be noted that the Libyan armed forces are also subject to another stringent vetting process implemented by the Integrity and Army Reform Commission.

57. Before the adoption of the Law on Political and Administrative Isolation, the Human Rights, Transitional Justice and Rule of Law Division had advised the General National Congress on international standards for vetting State institutions and the risks of exclusionary measures. This advice was largely not taken into account.

7. Missing persons

58. Thousands of persons remain missing following the 2011 conflict, in addition to those forcibly disappeared under the Qadhafi regime. As at December 2013, 2,644 missing persons were registered with the Ministry of the Affairs of the Families of Martyrs and Missing Persons. In June 2013, the Ministry prepared a draft law to address the issue of missing persons and enforced disappearances. On 22 December 2013, the General National Congress adopted a law for the families of those killed or missing during the revolution. The law, which provides pensions and benefits such as medical care, government employment and symbolic reparation to the families of those killed or missing in this context, explicitly excludes those who opposed the revolution. It also establishes a commission affiliated with the Council of Ministers to search for and identify the missing.

59. In order to address the issue of missing persons, the Human Rights, Transitional Justice and Rule of Law Division has provided advice to the technical committee responsible for drafting the law. It has also provided advice to support an assessment conducted by Physicians for Human Rights[13] and endorsed the resulting recommendation to create an independent commission to address comprehensively the issue of missing persons. A commission such as this was in place before the creation of the Ministry of the Affairs of the Families of Martyrs and Missing Persons. In addition the Division has provided advice and support to the association of families of the victims of the killings in the Abu Salim Prison in 1996.

D. National human rights bodies

1. The National Council for Civil Liberties and Human Rights

60. In December 2011, the National Transitional Council established the National Council for Civil Liberties and Human Rights as the national human rights institution of Libya. However, due to a lack of allocated staffing and financial resources, the Council only effectively began operating in January 2013. It is encouraging to note that it is now fully staffed and space has been secured for its ongoing operations. The Human Rights, Transitional Justice and Rule of Law Division has provided advice, training and technical resources to the Council and referred several cases to it. Upon request, the Division has also recruited a dedicated adviser who is providing technical support to the Council to facilitate its conformity with the Principles relating to the Status of National Institutions (the Paris Principles).

[13] Physicians for Human Rights, "Libyan human identification needs assessment and gap analysis" (Washington, D.C., 2013), available from physiciansforhumanrights.org/library/reports/libyan-human-identification-needs-assessment-and-gap-analysis.html.

2. The standing committees of the General National Congress

61. The General National Congress has a number of standing committees, including a Legislative and Constitutional Committee charged with elaborating legislative drafts and a Human Rights Committee. The Human Rights, Transitional Justice and Rule of Law Division has engaged with the committees on issues relating to legislation, transitional justice, capacity-building, raising human rights awareness and strengthening engagement with civil society. It has also provided advice on international human rights mechanisms and obligations and coordinated meetings between the Human Rights Committee of the Congress and relevant United Nations agencies such as UNICEF. The Division has also provided technical advice to support, and participated in, the first forum for human rights organizations in Libya organized by the Human Rights Committee of the Congress in April 2013; it is currently supporting the committee in planning a media campaign to raise awareness of human rights amongst the Libyan public.

3. Civil society

62. Civil society was repressed during the Qadhafi era and is now slowly beginning to be established. In this regard, the Human Rights, Transitional Justice and Rule of Law Division has engaged with civil society organizations and human rights defenders through providing training courses and advice on engaging with international human rights mechanisms and the role of the media in the protection of human rights. The Division has organized workshops in several locations throughout the country, such as Tripoli, al-Khoms and al-Zawiya, on themes including the obligations of Libya under international human rights law and has distributed human rights education literature to the civil society community across the country. It has also provided substantive advice and support to the organization of a major two-day human rights conference held in al-Baida in May 2013. A number of civil society representatives and high-level officials attended the conference to discuss the protection and promotion of human rights in Libya.

E. Legal reform

63. The Libyan penal code and the code of criminal procedure, in addition to other legislation, include gaps and provisions that are not in line with international human rights standards. For example, Libyan legislation does not criminalize genocide, war crimes or crimes against humanity. The death penalty is prescribed for a broad range of offences, including offences which do not meet the threshold of "most serious crimes" under international human rights law.[14]

64. The Human Rights, Transitional Justice and Rule of Law Division continues to provide advice to the General National Congress on laws adopted or under discussion since the conflict and is supporting the review of the Libyan penal code and code of criminal procedure with respect to their compliance with international human rights standards. This review was identified by the Government of Libya as a priority at the ministerial meeting in Paris in February 2013, however progress has been limited to date. The Division is coordinating closely with UNDP, UNODC, the Ministry of Justice, the High Judicial Institute, the Congress, academics and civil society to support the review, ensure national ownership of it and strengthen national capacity to conduct similar reviews in the future.

[14] Article 6, paragraph 2, of the International Covenant on Civil and Political Rights prescribes that in States that have not abolished it, the death penalty may only be imposed for the "most serious crimes". This term has been interpreted to mean that the death penalty should only be applied to the crimes of murder or intentional killing. See A/HRC/24/18, para. 24.

65. The Division will also continue to monitor the constitution-making process and will seek to provide advice and drafting assistance, in association with other entities of the United Nations, to the Constitution Drafting Assembly once it is elected and operational. In December 2013, the Division organized two workshops to facilitate discussion of human rights and the constitution: the first jointly with the National Council for Civil Liberties and Human Rights and the Office of Human Rights and International Humanitarian Law at the Ministry of Defence and the second with the Human Rights Committee of the General National Congress. The Division will continue to organize workshops and training sessions to further build the capacity and aid the participation of civil society organizations representing all segments of Libyan society, including women, minorities and displaced persons, in the constitution-making process.

IV. Recommendations

66. **The United Nations High Commissioner for Human Rights recommends that the Government of Libya, through capacity-building and technical assistance support:**

(a) Comprehensively review and strengthen protections in law and policy to guarantee the rights of women, minorities, migrants, refugees and children. All necessary measures should be taken to facilitate greater access to justice for these groups. In addition, legislation should be adopted and operational policies and procedures put in place to combat sexual violence and provide effective redress to victims;[15]

(b) Develop a comprehensive strategy to address the issue of all persons displaced since 2011, ensuring that their right to return to their homes in safety and with dignity is guaranteed, whilst providing them with protection and humanitarian assistance in the interim, in accordance with the Guiding Principles on Internal Displacement;

(c) Urgently address the situation of persons deprived of their liberty, with due regard to the situation of female detainees through, inter alia, accelerating the process of handing over all detention facilities from the armed brigades to the effective control of State authorities and investigating allegations of torture or other ill-treatment, including sexual harassment, and bringing to justice those responsible. Safeguards against torture and other ill-treatment should be put in place in all prisons and detention facilities in line with Libyan law, the Standard Minimum Rules for the Treatment of Prisoners and other relevant international human rights standards. Persons deprived of their liberty should be allowed to receive regular visits from their families and visits from their lawyers in full confidentiality. The National Council for Civil Liberties and Human Rights and relevant international organizations should also be afforded access in accordance with their mandates;

(d) Strengthen the capacity of State institutions, such as the judicial system and the Judicial Police, to uphold the rule of law through, inter alia, enhancing the security for prosecutors, judges and the courts through close cooperation between the Ministries of Justice, Interior and Defence. A prosecutorial strategy should be developed to address crimes committed under the former regime, as well as those committed since the revolution, and the capacity of prosecutors and judges to handle

[15] Such procedures and policies would include telephone hotlines, provision of psychological support, establishment of victim rehabilitation centres and implementation of awareness-raising programmes to combat discrimination against victims.

complex crime investigations should be enhanced. A fair vetting and recruitment process for the Judicial Police and other detaining agencies should be established. Proper resources and training to ensure the effective management of prisons in line with international human rights standards should also be provided;

(e) Implement a comprehensive approach to transitional justice through, inter alia, ensuring the appointment of qualified and independent members of the Fact-Finding and Reconciliation Commission, taking into account gender issues and ensuring the coordination of all truth-seeking initiatives. Full and effective reparations should be provided in a fair, consistent and gender-sensitive manner and without discrimination. The Law on Political and Administrative Isolation and related vetting legislation and policies should be reviewed to ensure that vetting criteria and the process for their application are precise, proportionate and fair. Any commission for missing persons should be independent and impartial, with the resources and authority to search for and identify all missing persons, regardless of affiliation, and take the necessary measures to support their families. All necessary measures should be taken to ensure a safe environment, free of intimidation, for the trials of members of the former regime and members of the armed brigades, whilst ensuring accordance with internationally recognized fair trial standards;

(f) Develop a robust legal framework for the promotion and protection of human rights by ensuring that the constitution and national legislation are fully compliant with international human rights standards, including by completing the comprehensive review of the penal code, the code of criminal procedure and other legislation. An inclusive, consultative and transparent constitution drafting process should be carried out, with the full participation of all sections of Libyan society, including those representing women, indigenous peoples and minorities, with the aim of adopting a constitution that safeguards dignity, non-discrimination, equality and human rights for all;

(g) Take all necessary steps to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearances, the 1951 Convention relating to the Status of Refugees and its Optional Protocol and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and withdraw all of its reservations to the Convention on the Elimination of All Forms of Discrimination against Women;

(h) Establish a moratorium on the use of the death penalty, aiming to abolish it. Pending abolition, ensure full compliance with the restrictions prescribed in particular in article 6 of the International Covenant on Civil and Political Rights, including by limiting the use of the death penalty only to the most serious crimes and by ensuring scrupulous respect of due process guarantees, including fair trial guarantees in capital cases.

67. The United Nations High Commissioner for Human Rights further encourages the implementation of the recommendations set out in the report of the International Commission of Inquiry on Libya.